



# Coal Industry Act 1994

## 1994 CHAPTER 21

An Act to provide for the establishment and functions of a body to be known as the Coal Authority; to provide for the restructuring of the coal industry, for transfers of the property, rights and liabilities of the British Coal Corporation and its wholly-owned subsidiaries to other persons and for the dissolution of that Corporation; to abolish the Domestic Coal Consumers' Council; to make provision for the licensing of coal-mining operations and provision otherwise in relation to the carrying on of such operations; to amend the Coal Mining Subsidence Act 1991 and the Opencast Coal Act 1958; and for connected purposes. [5th July 1994]

Be it enacted by the Queen'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:—

**Modifications etc. (not altering text)**

C1 Act amended (1.4.1996) by [S.I. 1996/593](#), reg. 2, [Sch. 1](#)

### PART I

#### RE-ORGANISATION OF COAL INDUSTRY

##### *The Coal Authority*

#### **1 Establishment of the Coal Authority.**

- (1) There shall be a body corporate to be known as the Coal Authority (in this Act referred to as "the Authority") for the purpose of—

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- (a) holding, managing and disposing of interests and rights in or in relation to the unworked coal and other property which is transferred to or otherwise acquired by it by or under this Act;
  - (b) carrying out functions with respect to the licensing of coal-mining operations;
  - (c) carrying out functions with respect to coal-mining subsidence and in connection with other matters incidental to the carrying on of any opencast or other coal-mining operations;
  - (d) facilitating the establishment and maintenance of arrangements for the information to which persons are to be entitled under this Act to be made available to them; and
  - (e) carrying out the other functions conferred on it by virtue of this Act.
- (2) The Authority shall consist of not less than two nor more than eight members appointed by the Secretary of State.
- (3) The Secretary of State shall designate one of the members appointed under this section as the chairman of the Authority and may, if he thinks fit, designate another such member as its deputy chairman.
- (4) In appointing a person to be a member of the Authority, the Secretary of State shall have regard to the desirability of appointing a person who has experience of, and has shown capacity in, some matter relevant to its functions.
- (5) The Authority shall not be regarded—
- (a) as the servant or agent of the Crown, or as enjoying any status, immunity or privilege of the Crown; or
  - (b) by virtue of any connection with the Crown, as exempt from any tax, duty, rate, levy or other charge whatsoever, whether general or local;
- and the Authority's property shall not be regarded as property of, or property held on behalf of, the Crown.
- (6) The provisions of Schedule 1 to this Act shall have effect with respect to the Authority and its finances.

## **2 Duties of the Authority with respect to licensing.**

- (1) It shall be the duty of the Authority to carry out its functions under Part II of this Act in the manner that it considers is best calculated to secure, so far as practicable—
- (a) that an economically viable coal-mining industry in Great Britain is maintained and developed by the persons authorised by virtue of that Part to carry on coal-mining operations;
  - (b) that such persons are able to finance both the proper carrying on of the coal-mining operations that they are authorised to carry on and the discharge of liabilities arising from the carrying on of those operations; and
  - (c) that persons to whom obligations are owed in respect of subsidence damage caused at any time (whether before or after the passing of this Act) do not sustain loss in consequence of any failure by a person who is or has been a licensed operator to make such financial provision for meeting present and future liabilities as might reasonably have been required of that person.
- (2) Subject to section 4 below, it shall be the duty of the Authority, in carrying out its functions under Part II of this Act, to have regard to the desirability of securing—

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- (a) that persons authorised by virtue of that Part to carry on coal-mining operations are persons who have at their disposal such experience and expertise in the carrying on of such operations as are appropriate for ensuring that any authorised operations are properly carried on; and
  - (b) that competition is promoted between the different persons carrying on, or seeking to carry on, coal-mining operations.
- (3) It shall also be the duty of the Authority, in carrying out its functions under Part II of this Act in cases where it appears that subsidence damage may be caused to any land or other property that does not consist in unworked coal or in a coal mine, to have regard—
- (a) to the extent of the damage which is likely to be caused; and
  - (b) to the character of the land or other property in question and to the uses to which it is or is likely to be put.

### **3 Duties of the Authority with respect to property.**

- (1) It shall be the duty of the Authority, in carrying out the functions mentioned in section 1(1)(a) above, to have regard to—
- (a) the need to co-ordinate its practice in relation to relevant property dealings with the carrying out of its functions under Part II of this Act; and
  - (b) the need to secure the safety of members of the public.
- (2) Subject to subsection (4) below, it shall be the duty of the Authority, so far as practicable, to make available for acquisition by others such of its land and other property as—
- (a) does not consist in an interest in any unworked coal or coal mine;
  - (b) is not being put to a use which justifies its retention by the Authority; and
  - (c) in the opinion of the Authority, is unlikely to be required for any such use.
- (3) For the purposes of subsection (2) above the only uses for land and other property which justify its retention by the Authority are—
- (a) use by any person for or in connection with the carrying on of any coal-mining operations; and
  - (b) use by the Authority in connection with the administration of its own activities or with the management of the land and other property which it is entitled to retain or is unable to dispose of;
- and for this purpose the management of land and other property shall include the performance of every obligation to which the Authority is subject in relation to any of that land or other property.
- (4) Subject to subsection (6) below, it shall be the duty of the Authority, where it disposes of any interests or rights in or in relation to any land or other property, to secure the best terms reasonably available for the disposal.
- (5) Subject to subsection (6) below, it shall be the duty of the Authority, in the exercise and performance of its powers and duties with respect to its land and other property, to have regard to the desirability of the exploitation, so far as that is economically viable, of coal-bed methane in Great Britain.
- (6) It shall be the duty of the Authority, in determining the terms on which it may dispose of any interest or right in or in relation to any unworked coal or coal mine to a person who requires the interest or right for purposes connected with activities to be carried

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on under the authority of a licence under section 2 of the <sup>M1</sup>Petroleum (Production) Act 1934, to act in accordance with such arrangements and principles as it may, with the approval of the Secretary of State, have determined for the purposes of subsection (5) above.

- (7) It shall be the duty of the Authority, in formulating any proposals for works on or in relation to any of its land or other property which has been used for the carrying on of any coal-mining operations but is no longer to be put to such use—
- (a) to have regard to the desirability of preserving natural beauty, of conserving flora and fauna and geological or physiographical features of special interest and of protecting sites, buildings, structures and objects of architectural, historic or archaeological interest; and
  - (b) to take into account the effect of the proposals on the natural beauty of any area or on any such flora, fauna, features, sites, buildings, structures or objects.
- (8) In this section “relevant property dealings”, in relation to the Authority, means the grant of such interests and rights in or in relation to its land or other property as appear to it to be appropriate for the purpose of enabling or facilitating its use for, or in connection with, the carrying on of any coal-mining operations.

#### Marginal Citations

**M1** 1934 c. 36.

#### 4 Duty of the Authority with respect to safety.

- (1) It shall be the duty of the Authority—
- (a) in conjunction with the Health and Safety Executive, to prepare and from time to time revise a document setting out such means as may, with the approval of the Health and Safety Commission, be agreed between the Authority and that Executive for securing co-operation and the exchange of information between them; and
  - (b) without prejudice to the effect or operation of any relevant statutory provisions (within the meaning of Part I of the <sup>M2</sup>Health and Safety at Work etc. Act 1974), to conduct itself in the carrying out of its functions in accordance with any agreement contained in that document.
- (2) As soon as practicable after agreement is reached for the purposes of—
- (a) the preparation of a document in accordance with subsection (1) above, or
  - (b) any revision of a document prepared in accordance with that subsection,
- the Authority shall send a copy of the document or, as the case may be, of the revised version of it to the Secretary of State, and the Secretary of State shall lay the copy before each House of Parliament.

#### Marginal Citations

**M2** 1974 c. 37.

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## **5 General powers of the Authority.**

- (1) Subject to subsections (6) and (7) below, the Authority shall have power to do anything which, in the opinion of the Authority, is calculated to facilitate, or is conducive or incidental to, the carrying out of its functions.
- (2) Subject to subsections (6) and (7) below, the powers of the Authority shall include power, for the purposes of or in connection with the carrying out of its functions—
  - (a) to acquire land by agreement and to hold and dispose of land; and
  - (b) in exercise of rights attached to its interests in land, or of any such rights in relation to other land as are granted to it by the owner or occupier, to carry out any works on or with respect to land.
- (3) Subject to subsection (7) below, where the Authority has land which it is required under this Act to make available for acquisition by others, its powers shall include—
  - (a) power, in exercise of any rights attached to its interest in the land, to develop or improve the land, or to join with others in developing or improving the land, with a view to its disposal for use or enjoyment by another; and
  - (b) power by agreement to acquire other land with a view (with or without developing or improving it) to disposing of the other land together with the land in question.
- (4) The powers of the Authority shall include power to enter into arrangements with a person who is or has been a licensed operator to act on that person's behalf in relation to any of the following matters, that is to say—
  - (a) the giving and publication of notices under or for the purposes of section 38 or 49 below or any provisions of the 1991 Act; or
  - (b) the handling of any matter arising under the 1991 Act and the performance of that person's obligations in relation to any subsidence damage.
- (5) The powers of the Authority shall include power, where it—
  - (a) provides a service to anyone in the course of the exercise or performance of its powers or duties, or
  - (b) receives any application for the grant of, or any offer for, any such interest or right in or in relation to any of its land or other property as may be required by any person for the purpose of exploring for coal or of carrying on coal-mining operations,to make a charge for the provision of that service or, as the case may be, for considering that application or offer.
- (6) The Authority shall not have power—
  - (a) for commercial purposes or with a view to itself using any coal or product of coal, to carry on any coal-mining operations consisting in—
    - (i) the winning, working or getting (with or without other minerals) of any coal,
    - (ii) the treatment of coal in the strata for the purpose of winning any product of coal, or
    - (iii) the winning, working or getting of any product of coal resulting from such treatment;
  - or
  - (b) with a view to any such operations being so carried on by the Authority or any other person, to explore for coal or, subject to subsection (4) above, to take

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any steps for the benefit of another for obtaining planning permission or any other authorisation required for carrying on coal-mining operations.

- (7) The Authority shall not—
- (a) acquire any land or acquire or hold shares in or other securities of any body corporate or otherwise become a member of a body corporate, or
  - (b) lend money to any person or guarantee or otherwise provide security for a loan made to any person,
- except with the agreement of the Secretary of State.
- (8) The consent of the Treasury shall be required for the giving of the Secretary of State's agreement under subsection (7) above.
- (9) Subsections (2) to (5) above shall be without prejudice to the generality of subsection (1) above.

## **6 Directions to the Authority by the Secretary of State.**

- (1) It shall be the duty of the Authority to comply with such directions of a general character as may be given to it by the Secretary of State with respect to the carrying out of any of its functions, or to its activities generally.
- (2) It shall be the duty of the Authority to comply with such specific directions as may be given to it by the Secretary of State with respect to—
  - (a) whether or not it exercises any of its powers and the manner in which any of its powers is to be exercised;
  - (b) the manner in which any of its duties is to be performed; or
  - (c) any other conduct by the Authority in connection with the carrying out of any of its functions or with its activities generally.
- (3) Without prejudice to the generality of the preceding provisions of this section, directions under this section may be given, in relation to any information which is in the possession of or available to the Authority, requiring the Authority to do one or both of the following, that is to say—
  - (a) publish it in such manner as may be described in the direction;
  - (b) furnish it, together with such explanations as he may reasonably require, to the Secretary of State.
- (4) A direction under this section shall not authorise the publication of any information if, apart from the direction, the publication of that information would be in contravention of arrangements for the time being in force for the purposes of section 59 below.
- (5) The power to give a direction under this section shall be exercisable, except in an emergency, only after consultation with the Authority.

### *The Corporation's exploitation rights*

## **7 Exploitation rights: general.**

- (1) From the passing of this Act until such date as the Secretary of State may by order made by statutory instrument appoint for the purposes of this section ("the restructuring date"), section 36 of the 1946 Act (power of the Corporation, subject to limits

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contained in subsection (2)(a) and (c), to grant licences by way of exception to its exclusive rights) shall have effect with the omission—

- (a) in subsection (2)(a), of the words from “with respect to which” to “150”; and
  - (b) in subsection (2)(c), of the words from “where” to “250,000 tonnes”.
- (2) On the restructuring date the Corporation shall cease to have the exclusive right, under section 1 of the 1946 Act, of searching for, boring for, working and getting coal in Great Britain.
  - (3) On the restructuring date the Corporation’s interests in unworked coal and coal mines, including its interests in any coal that, notwithstanding having been worked at some time, is so attached to or incorporated in any coal mine or other land as to be, in law, a part of it, shall vest without further assurance in the Authority.
  - (4) Subsection (3) above shall have effect subject to sections 8 and 9 below and to the powers conferred by virtue of section 12(1) below and, in its application to Scotland, shall have effect with the omission of the words “without further assurance”.
  - (5) The Secretary of State shall not under this section appoint a date as the restructuring date unless he is satisfied that such schemes have been or are to be made under section 12 below as will ensure that the Authority is entitled or subject, from that date, to all such property, rights and liabilities as it requires for carrying out the functions which become its functions on that date.

#### Subordinate Legislation Made

- P1 [S. 7](#) power exercised: 31.10.1994 appointed as the restructuring date, see [s. 68\(2\)](#) and [S.I. 1994/2553, art. 2](#)

## 8 Exploitation rights: territorial waters and continental shelf.

- (1) Subject to section 9 below, the interests in unworked coal and coal mines which are vested in the Corporation immediately before the restructuring date shall be deemed to include—
  - (a) the interests and rights of a freehold owner in and in relation to any such coal under the territorial sea adjacent to the United Kingdom as is coal with respect to which the Corporation has rights immediately before that date by virtue of section 1 of the <sup>M3</sup>Continental Shelf Act 1964, as read with section 2(3) of the <sup>M4</sup>Territorial Sea Act 1987; and
  - (b) the exclusive right, for the purposes of the rights of the United Kingdom mentioned in section 1(1) of that Act of 1964 and without the consent of the Secretary of State, of authorising the carrying on, in relation to the coal in any designated area, of any of the coal-mining operations to which section 25 below applies or of any operation carried on for the purpose of searching or boring for coal.
- (2) Section 7(3) above shall not vest in the Authority any interest or rights in or in relation to any coal or coal mines outside Great Britain and the territorial sea adjacent to Great Britain except those mentioned in subsection (1)(b) above.
- (3) Where on the coming into force on or after the restructuring date of any Order in Council under section 1 of the <sup>M5</sup>Territorial Sea Act 1987 any area outside the United Kingdom and the territorial sea adjacent to the United Kingdom is brought within that

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territorial sea, that Order in Council shall have the effect of vesting the interests and rights of a freehold owner in and in relation to coal under the seabed in that area in such person as may be specified in the Order in Council or, if no person is so specified, in the Authority.

- (4) Nothing shall be vested in any person by virtue of subsection (3) above which would by virtue of section 9 below have been excluded, had the Order in Council come into force before the restructuring date, from the interests and rights which are deemed to be vested in the Corporation immediately before that date.
- (5) In this section “designated area” means any area which is for the time being both outside the territorial sea adjacent to the United Kingdom and comprised in an area designated (whether before or after the beginning of the restructuring date) under section 1(7) of the <sup>M6</sup>Continental Shelf Act 1964.
- (6) References in this section to the interests and rights of a freehold owner shall be construed, in relation to any coal the interests or rights in or in relation to which fall to be determined according to the law of Scotland, as references to the interests and rights of a proprietor of the *dominium utile*.

#### Marginal Citations

- M3** 1964 c. 29.  
**M4** 1987 c. 49.  
**M5** 1987 c. 49.  
**M6** 1964 c. 29.

## 9 Exploitation rights: oil and gas.

- (1) It is hereby declared, without prejudice to section 10(2) of the <sup>M7</sup>Petroleum (Production) Act 1934 (petroleum set free in the course of mining and other lawful operations), that the interests and rights which are vested or deemed to be vested in the Corporation immediately before the restructuring date do not include—
  - (a) any interest in, or any entitlement to an interest in, any oil or gas which, in its natural condition in strata, is or becomes absorbed in or adsorbed to any coal; or
  - (b) any right, without a licence under section 2 of that Act of 1934, to search for, bore for or get any oil or gas which is or becomes so absorbed or adsorbed.
- (2) Accordingly, nothing in any enactment or subordinate legislation relating to interests or rights in or in relation to any coal, or in or in relation to any oil or gas, shall be taken to have prevented any such interest or entitlement as is mentioned in subsection (1)(a) above from having become by virtue of any enactment or subordinate legislation, or from continuing to be, an interest or entitlement of the Crown.
- (3) The exclusions confirmed by virtue of the preceding provisions of this section from the interests and rights which are vested or deemed to be vested in the Corporation immediately before the restructuring date shall not, in the case of any coal won, worked, treated or got in pursuance of any of those interests or rights, be taken to have, or at any time to have had, the effect of giving rise to any liability in respect of the winning, working, treatment, getting or disposal of—



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- (a) any of that coal having oil or gas occluded in it at the time of its being brought from the strata to the surface or, as the case may be, of its treatment in the strata; or
  - (b) any product of that coal resulting from any such treatment.
- (4) So long as the Authority retains—
- (a) the interest of a freehold owner in any coal or coal mine vested in it by virtue of section 7(3) above, or
  - (b) in Scotland, the interest of proprietor of the *dominium utile* as respects any such coal or coal mine,
- the ownership of the coal or coal mine or, as the case may be, the possession of the interest of such a proprietor shall entitle the Authority to grant such rights in relation to that coal or coal mine as are required by any person for the purpose, under the authority of any licence which has been or may be granted to that person under section 2 of the <sup>M8</sup>Petroleum (Production) Act 1934, of searching for, boring for or getting any oil or gas in that coal or coal mine.
- (5) The grant under subsection (4) above to any person of any rights—
- (a) shall, in favour of that person, bind any other person who has or acquires an interest or right in or in relation to the coal or coal mine in question; but
  - (b) shall be without prejudice, in a case where there is a person other than the Authority with an interest or right in that coal or coal mine at the time of the grant, to any such person's rights as against the Authority in respect of—
    - (i) any interference by virtue of the grant with the enjoyment of his interest or right; or
    - (ii) any contravention of an undertaking given in relation to that interest or right.
- (6) In this section “oil or gas” means—
- (a) any mineral oil or any relative hydrocarbon which, in its natural state, is not a solid; or
  - (b) methane or any other natural gas.

#### Marginal Citations

M7 1934 c. 36.

M8 1934 c. 36.

## 10 Protection for certain interests in coal and coal mines.

- (1) This section applies to any coal or coal mine the ownership of which—
- (a) is vested in the Corporation immediately before the restructuring date; and
  - (b) has not, at any time on or after that date, become vested in a person other than the Corporation or the Authority by virtue of being conveyed or transferred to that person either—
    - (i) by the Authority or the Corporation; or
    - (ii) in accordance with a scheme under section 12 below.
- (2) No interest or right adverse to the title of the Authority or the Corporation in any coal or coal mine to which this section applies shall be capable of being acquired—

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- (a) under section 15 or 17 of the <sup>M9</sup>Limitation Act 1980 (time limits on actions to recover land and extinction of titles); or
  - (b) under section 1 or 2 of the <sup>M10</sup>Prescription and Limitation (Scotland) Act 1973 (prescriptive possession on *ex facie* valid deed).
- (3) Subject to section 13(8) of the <sup>M11</sup>Gas Act 1965 (compulsory purchase for purposes of underground gas storage), where any power to acquire land compulsorily is conferred by or under any enactment (including, unless it otherwise provides, an enactment passed after this Act), that power shall not be exercisable on or after the restructuring date in respect of any coal or coal mine to which this section applies except in so far as—
- (a) the coal is coal that it is necessary to dig or carry away in the course of operations for the purposes of which the power is conferred; or
  - (b) the coal mine is one that it is necessary to use in the course of any such operations.
- (4) Subsections (2) and (3) above, in their application to England and Wales, shall not restrict the acquisition as mentioned in either of those subsections of any such liberty, privilege, easement, advantage or other right as adversely affects any coal or coal mine to which this section applies and is either annexed to any land or, without being so annexed, is acquired under any enactment.
- (5) Subsection (3) above, in its application to Scotland, shall not restrict the acquisition, as mentioned in that subsection—
- (a) of any such servitude as adversely affects any coal or coal mine to which this section applies; or
  - (b) of any other right so affecting (but not adverse to the title in) such coal or coal mine.
- (6) For the purposes of subsection (4) above the reference to a liberty, privilege, easement, advantage or other right being annexed to any land is a reference to its appertaining to that land or any part of it, to its being demised, occupied or enjoyed with that land or any part of it or to its being reputed or known as part or parcel of the land or as appurtenant to the land or to any part of it.
- (7) The reference in subsection (1) above to the ownership of any coal or coal mine is a reference—
- (a) in relation to England and Wales, to the interest of the freehold owner of that coal or coal mine; and
  - (b) in relation to Scotland, to the interest as respects that coal or coal mine of proprietor of the *dominium utile*.

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**Modifications etc. (not altering text)**

**C2** S. 10(3) applied (28.7.1998) by 1998 c. iii, s. 1, Sch., Order 40(2).

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**Marginal Citations**

**M9** 1980 c. 58.

**M10** 1973 c. 52.

**M11** 1965 c. 36.

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### *Restructuring of the Corporation's undertaking*

#### **11 Restructuring of the Corporation's functions.**

- (1) On and after the restructuring date the Corporation shall continue to exist until dissolved under section 23 below but with its functions confined to—
  - (a) carrying on its undertaking for the time being, and
  - (b) managing and otherwise dealing with the interests and rights in or in relation to property which are for the time being vested in it,in such manner as, having regard to what is economically viable, it considers is best calculated for the purposes specified in subsection (2) below.
- (2) The purposes mentioned in subsection (1) are those of securing—
  - (a) that all of the Corporation's undertaking and property is in due course transferred out of the ownership and control of the Corporation;
  - (b) that any transfers for the removal of any of that undertaking or property from the ownership or control of the public sector are on the best available terms; and
  - (c) that the Corporation's undertaking and property are put to the best available use for so long as they remain in its ownership or under its control.
- (3) Where the Secretary of State notifies his opinion to the Corporation as to—
  - (a) what is economically viable in any case,
  - (b) the activities most likely to secure that any transfer for the removal of any of the Corporation's undertaking, or any property, from the ownership or control of the public sector will be on the best available terms, or
  - (c) the best available use to which any of the Corporation's undertaking or property may be put while owned by or under the control of the Corporation,the Corporation shall be required for the purposes of this section to accept that opinion.
- (4) Subject to subsection (6) below, on and after the restructuring date the following powers, that is to say—
  - (a) the powers conferred on the Corporation by subsection (2) of section 1 of the 1946 Act (incidental activities) and described in that subsection as functions,
  - (b) those conferred on the Corporation by subsection (3) of that section (power to enter into certain transactions), and
  - (c) a power, so far as not comprised in the powers conferred by subsection (2) or (3) of that section, to carry on any activities consisting in or connected with the working or getting of coal,shall be exercisable by the Corporation for the purposes of, and in connection with, the carrying out of the Corporation's functions under subsection (1) above as they were exercisable, before the restructuring date, for or in connection with the discharge of its duties under subsection (1) of that section.
- (5) The requirement for the matters secured under subsection (4) of section 1 of the 1946 Act (which specifies policy objectives for the Corporation) to be secured consistently with the proper discharge of the Corporation's duties under subsection (1) of that section shall have effect on and after the restructuring date as a requirement for those matters to be secured consistently with the carrying out of the Corporation's functions under subsection (1) above.
- (6) On and after the restructuring date the Corporation—

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- (a) shall not be entitled to carry on any coal-mining operations in respect of which a licence under Part II of this Act is required except under and in accordance with such a licence;
  - (b) shall no longer have the powers conferred on it by the <sup>M12</sup>National Coal Board (Additional Powers) Act 1966 and section 9 of the <sup>M13</sup>Coal Industry Act 1977 (powers with respect to petroleum); and
  - (c) shall have no power, by virtue of the preceding provisions of this section, to carry on any business which it would not have had power to carry on apart from this Act.
- (7) It shall be the duty of the Corporation to comply with such general or specific directions with respect to the exercise of any of its powers, or otherwise with respect to the carrying on of any of its activities, as may be given to it at any time by the Secretary of State.
- (8) The consent of the Treasury shall be required for the giving of any notification for the purposes of subsection (3) above; and the power of the Secretary of State to give such a notification and his power to give directions under subsection (7) above shall each be exercisable, except in an emergency, only after consultation with the Corporation.
- (9) Subsection (1) above shall be without prejudice to any powers conferred on the Corporation by the <sup>M14</sup>British Coal and British Rail (Transfer Proposals) Act 1993.

#### Marginal Citations

- M12** 1966 c. 47.  
**M13** 1977 c. 39.  
**M14** 1993 c. 2.

## 12 Restructuring schemes in relation to property etc.

- (1) The Secretary of State may, at any time before the restructuring date, make a scheme providing for the creation, as from that date, in favour of—
- (a) the Corporation, or
  - (b) any person to whom any part of the Corporation’s undertaking is to be transferred on that date in accordance with a scheme under this section,
- of such interests and rights in or in relation to any of the property transferred to the Authority by section 7(3) above as he thinks appropriate for the purposes of the Corporation’s functions on and after that date or, as the case may be, for the purposes of the carrying on by that person of the part of the Corporation’s undertaking which is to be transferred to him.
- (2) The Secretary of State may from time to time make a scheme for the transfer of property, rights and liabilities from the Corporation or any of its wholly-owned subsidiaries to the Authority or to any one or more other persons who—
- (a) have entered into an agreement under section 13 below to accept the transfers; or
  - (b) otherwise appear to him to be persons in whom it is appropriate to vest the property, rights and liabilities in question;
- and the persons to whom a transfer may be made by virtue of paragraph (b) above shall include the Secretary of State himself.

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*Status:* Point in time view as at 22/08/1996. This version of this Act contains provisions that are not valid for this point in time.

*Changes to legislation:* There are currently no known outstanding effects for the Coal Industry Act 1994. (See end of Document for details)

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- (3) The consent of the Treasury shall be required for the making of any scheme under this section (“a restructuring scheme”).
- (4) Subject to subsection (5) below, a restructuring scheme shall not, by virtue of subsection (2)(b) above, contain any provision in accordance with which any person other than—
- (a) the Secretary of State,
  - (b) the Authority,
  - (c) the Corporation or any of its wholly-owned subsidiaries, or
  - (d) a company wholly owned by the Crown,
- becomes entitled or subject to any property, rights or liabilities unless it appears to the Secretary of State that that person has consented to the provisions of the scheme so far as they relate to him.
- (5) Subsection (4) above shall not require the consent of any person to so much of any restructuring scheme as—
- (a) relates to property, rights or liabilities to which that person is already entitled or subject; and
  - (b) appears to the Secretary of State to be made for purposes that are no more than supplemental or incidental to the other provisions of the scheme.
- (6) It shall be the duty of the Secretary of State, in exercising his powers under this section to make a restructuring scheme in accordance with which any person other than—
- (a) a person mentioned in subsection (4)(a) to (d) above, or
  - (b) a body of whom all the members are appointed by a Minister of the Crown,
- is to become subject to any liabilities, to have regard to the fact that it would not be appropriate for the scheme to provide for the transfer of any of those liabilities to any person except where it is reasonable to believe that that person is a person who will be able to finance their discharge.
- (7) The Secretary of State—
- (a) shall retain and preserve a copy of every restructuring scheme made under this section; and
  - (b) at the request of any person who, in accordance with such a scheme, has become entitled to any interest or right in or in relation to any property, shall furnish that person with a list of the names and addresses of the other persons who have become entitled to interests or rights in or in relation to property in accordance with that or with any other such scheme.
- (8) Schedule 2 to this Act shall have effect with respect to restructuring schemes.

### **13 Agreements with respect to restructuring schemes.**

- (1) The Secretary of State may enter into any such agreement with another person as he thinks fit for the purpose of accepting or imposing contractual obligations with respect to, or to anything connected with, any or all of the following matters, that is to say—
- (a) the manner and circumstances in which his powers by virtue of section 12 above are to be exercised; and
  - (b) the property, rights or liabilities to which any proposed restructuring scheme relates.

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- (2) An agreement under this section may, in particular, provide for the making of payments to the Corporation or the Secretary of State (by way of consideration or otherwise) in respect of anything created or transferred in accordance with a restructuring scheme.
- (3) An agreement under this section may also contain provision in pursuance of which the Secretary of State binds himself as to the manner and circumstances in which he will exercise his power to give directions under section 11(7) above.
- (4) The consent of the Treasury shall be required for the making of an agreement under this section.
- (5) Any sums received by the Secretary of State in pursuance of an agreement under this section shall be paid into the Consolidated Fund.

#### **14 Duty to assist in preparation of restructuring schemes.**

- (1) It shall be the duty of the Corporation and of the Authority to furnish the Secretary of State with all such information and other assistance as he may require for the purposes of, or in connection with—
  - (a) the making of any restructuring scheme or of any agreement under section 13 above; or
  - (b) the exercise of any of his powers in relation to any such scheme.
- (2) The assistance that may be required under this section in relation to the making of any scheme or agreement includes—
  - (a) assistance required by the Secretary of State in connection with the exercise of any power conferred on him by section 26(6) below; and
  - (b) the taking of any step which the Corporation has power to take for the purpose of facilitating the implementation of any proposals of the Secretary of State which involve the inclusion of anything in the scheme or agreement or otherwise relate, in connection with the making of the scheme or agreement, to the Corporation's undertaking.
- (3) The obligations of the Corporation under this section shall include a duty to secure, so far as practicable, that its subsidiaries furnish all such information and assistance as the Secretary of State may require for the purposes of, or in connection with, the making of any such scheme or agreement, or the exercise of any such power, as is mentioned in subsection (1) above.
- (4) A duty under this section to furnish information or assistance, or to secure that it is furnished, shall be performed within such period after the requirement giving rise to the duty as the Secretary of State may allow.

*The Corporation's successors*

#### **15 Financial structure of successor companies.**

Schedule 3 to this Act (which makes provision as to the financial structure of the companies and related matters) shall have effect in relation to successor companies.

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## **16 Target investment limit for Government holding in successor companies.**

- (1) The following provisions of this section shall apply separately in relation to every successor company which is limited by shares.
- (2) As soon as he considers it expedient, and in any case not later than six months after the date when the company ceases to be wholly owned by the Crown, the Secretary of State shall by order fix a target investment limit in relation to the aggregate of the shares in the company which are for the time being held by any of the following, that is to say, the Treasury, the Secretary of State or any nominee of the Treasury or the Secretary of State (“the Government shareholding”).
- (3) The target investment limit for the Government shareholding in the company shall be expressed as a proportion of the voting rights which are exercisable in all circumstances at general meetings of that company (“the ordinary voting rights”).
- (4) The first target investment limit fixed under this section for the Government shareholding in the company shall not exceed, by more than one half of one per cent. of the ordinary voting rights, the proportion of those rights which is carried by the Government shareholding in the company at the time when the order fixing the limit is made.
- (5) The Secretary of State may from time to time by order fix a new target investment limit for the Government shareholding in the company in place of the one previously in force under this section; but—
  - (a) any new limit must be lower than the one it replaces; and
  - (b) an order under this section may be revoked only by an order fixing a new limit.
- (6) It shall be the duty of the Treasury and of the Secretary of State so to exercise—
  - (a) their powers under paragraph 3 of Schedule 3 to this Act and any power to dispose of any shares in the company held by either of them, and
  - (b) their power to give directions to their respective nominees,as to secure that the Government shareholding in the company does not carry a proportion of the ordinary voting rights exceeding any target investment limit for the time being in force under this section.
- (7) Notwithstanding subsection (6) above but subject to subsection (8) below, the Treasury or the Secretary of State may take up, or direct any of their respective nominees to take up, any rights for the time being available to them or him, or to that nominee—
  - (a) as an existing holder of shares in or other securities of the company; or
  - (b) by reason of the rescission of any contracts of sale of any such shares or securities.
- (8) If, as a result of anything done under subsection (7) above, the proportion of the ordinary voting rights carried by the Government shareholding at any time exceeds the target investment limit, it shall be the duty of the Treasury or, as the case may be, the Secretary of State to comply with subsection (6) above as soon after that time as is reasonably practicable.
- (9) For the purposes of this section the temporary suspension of any of the ordinary voting rights shall be disregarded.
- (10) The consent of the Treasury shall be required for the exercise by the Secretary of State of any power conferred on him by this section; and the power to make an order

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under this section shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

*Financial arrangements in connection with restructuring*

**17 Grant-making powers.**

(1) The Secretary of State shall not—

- (a) include provision in any restructuring scheme for the transfer to any person of a right to a grant or other payment specified in subsection (2) below; or
- (b) make any such grant or payment at any time after such date as the Secretary of State may by order made by statutory instrument appoint for the purposes of this paragraph;

but different dates may be appointed for the purposes of paragraph (b) above in relation to different grants and payments.

(2) The grants and payments mentioned in subsection (1) above are—

- (a) payments under section 4 of the <sup>M15</sup>Coal Industry Act 1967 or section 3 of the <sup>M16</sup>Coal Industry Act 1982 (payments providing re-imbursement of contributions to early retirement benefits etc.);
- (b) payments under section 2 of the <sup>M17</sup>National Coal Board (Finance) Act 1976 (payments towards mineworkers' pension scheme deficiency);
- (c) grants under—
  - (i) section 6 of the <sup>M18</sup>Coal Industry Act 1977 (pit closure grants for certain financial years); or
  - (ii) section 4 of the <sup>M19</sup>Coal Industry Act 1987 (grants in respect of expenditure referable to costs incurred in those financial years or in respect of other approved expenditure);
- (d) such payments under a scheme made in pursuance of section 7 of that Act of 1977 (payments to redundant workers or in respect of arrangements relating to concessionary coal) as may be made otherwise than to persons to whom the scheme applies in accordance with subsection (1) of that section;
- (e) grants under section 3 of that Act of 1987 (grants for workforce redeployment and reduction etc.);
- (f) grants under section 1 of the <sup>M20</sup>Coal Industry Act 1990 (deficiency grants).

**Marginal Citations**

- M15** 1967 c. 91.
- M16** 1982 c. 15.
- M17** 1976 c. 1.
- M18** 1977 c. 39.
- M19** 1987 c. 3.
- M20** 1990 c. 3.

**18 Residual payments grant.**

(1) The Secretary of State may, with the approval of the Treasury, make payments by way of grant (“residual payments grant”) to—



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- (a) the Corporation, or
  - (b) any successor company which is for the time being wholly owned by the Crown,

with a view to reducing or eliminating any amount falling to be shown in any accounts of the Corporation or that company as a deficit on its cash flow for any accounting period.
- (2) The payment of residual payments grant may be made by advancing sums during any accounting period in anticipation of what it appears will be the deficit on cash flow for that period.
- (3) Residual payments grant shall not be paid to any person in respect of any deficit which appears to the Secretary of State to be attributable to any failure of the Corporation to be paid, or to apply for, any amount which could have been paid, or would have been payable, to the Corporation by way of any payment or grant mentioned in subsection (2) of section 17 above.
- (4) Where payments by way of residual payments grant have been made to the Corporation or any successor company and it appears to the Secretary of State that, after those payments have been taken into account in relation to the accounting period in respect of which they are made, there is a surplus on its cash flow for that accounting period or for any subsequent accounting period, an amount equal to whichever is the smaller of—
  - (a) so much of the aggregate amount of payments made by way of grant under this section to the Corporation or, as the case may be, that company as has not already been repaid under this subsection, and
  - (b) the amount of the surplus,shall be paid by the Corporation or, as the case may be, that company to the Secretary of State.
- (5) Any sums falling to be paid to the Secretary of State under subsection (4) above shall bear interest at such rate as the Secretary of State may, with the consent of the Treasury, determine.
- (6) No amount shall fall to be paid to the Secretary of State under subsection (4) or (5) above in respect of any surplus on the cash flow of any successor company for any accounting period ending after the company has ceased to be wholly owned by the Crown; but a successor company which ceases to be wholly owned by the Crown shall be deemed to be required to produce accounts for the purposes of this section for the period between the end of its previous accounting period and the time when it ceases to be wholly owned by the Crown.
- (7) Any sums required by the Secretary of State for making any grant under this section shall be paid out of money provided by Parliament; and any sums received by the Secretary of State by virtue of subsections (4) and (5) above shall be paid into the Consolidated Fund.
- (8) Subject to subsection (6) above, in this section “accounting period”, in relation to the Corporation or any successor company, means any period for which the Corporation or that company is required by or under any enactment to produce accounts.

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## **19 Concessionary coal.**

- (1) The Secretary of State may, out of money provided by Parliament, make such payments to such persons as he may think fit for the purpose of securing any of the following, that is to say—
  - (a) that supplies of concessionary coal are made on and after the restructuring date to persons who would have received such supplies from the Corporation under relevant arrangements if those arrangements had not been affected by steps taken in connection with the restructuring of the coal industry;
  - (b) that provision is made for sums to be paid in lieu of concessionary coal to persons such as are mentioned in paragraph (a) above; and
  - (c) that provision is made for sums to be so paid to persons who (but for any steps so taken) would, under relevant arrangements, have received payments in lieu of concessionary coal.
- (2) The consent of the Treasury shall be required for the making of payments under this section.
- (3) In this section—
 

“concessionary coal” means coal or other solid fuel supplied free of charge or at reduced prices; and

“relevant arrangements” means any arrangements which—

  - (a) whether or not they are legally enforceable, are in operation immediately before the restructuring date; and
  - (b) provide for the supply of concessionary coal or for the making of payments in lieu of concessionary coal.

## **20 Extinguishment of loans to the Corporation.**

- (1) Where—
  - (a) any sum has been lent (whether before or after the passing of this Act) to the Corporation out of money provided by Parliament, or
  - (b) any sum is for the time being to be taken as having been so lent,
 the Secretary of State may by order extinguish any present or contingent liabilities of the Corporation to make repayments of capital or payments of interest in respect of that sum.
- (2) Subject to the following provisions of this section, section 400(1) of the <sup>M21</sup>Income and Corporation Taxes Act 1988 (restriction of tax losses in case of any write-off of government investment) shall not have effect in relation to any extinguishment of liabilities by an order under subsection (1) above.
- (3) Subsection (6) of section 400 of that Act of 1988 shall apply in relation to any such extinguishment as is mentioned in subsection (2) above as if the reference to the body in question were a reference to the Corporation.
- (4) The consent of the Treasury shall be required for the making of an order under this section.
- (5) The power to make an order under subsection (1) above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

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#### Marginal Citations

M21 1988 c. 1.

### 21 Taxation effects of restructuring.

Schedule 4 to this Act (which makes provision about taxation in relation to provisions contained in, or made in connection with, a restructuring scheme) shall have effect.

### 22 Pensions and miners' welfare organisations.

- (1) Schedule 5 to this Act (which makes provision, in connection with the restructuring of the Corporation's undertaking, in relation to the pensions paid to or in respect of its present and former employees and other persons) shall have effect.
- (2) The <sup>M22</sup>Miners' Welfare Act 1952 shall cease to have effect.
- (3) Subsection (3) of section 12 of that Act of 1952 (transfer of the functions under that Act of the Coal Industry Social Welfare Organisation) shall have effect, pending its ceasing to have effect under subsection (2) above, as if the reference to that Organisation's functions under that Act were a reference to all its functions, whether or not under that Act.

#### Commencement Information

II S. 22(1)(3) in force at 31.10.1994 by S.I. 1994/2552, art. 2, Sch. 1

#### Marginal Citations

M22 1952 c. 23.

### *Reduction in membership and dissolution of the Corporation*

### 23 Reduction in membership and dissolution of the Corporation.

- (1) As from such date as the Secretary of State may by order appoint—
  - (a) the minimum number of members of the Corporation, in addition to the chairman, shall be one;
  - (b) the requirements of section 2(3) of the 1946 Act and section 1(2) of the <sup>M23</sup>Coal Industry Act 1949 as to the persons from amongst whom members of the Corporation are to be appointed shall cease to have effect;
  - (c) there shall be no requirement for a member of the Corporation to be appointed to act as its deputy chairman; and
  - (d) the Secretary of State may at any time, if he considers it appropriate to do so in consequence of the coming into force of any provision of this Act or of any restructuring scheme, by notice in writing remove from office any member of the Corporation, including the chairman;

and different dates may be appointed under this subsection for the purposes of its different paragraphs.

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- (2) As soon after the restructuring date as it appears to the Secretary of State that it is no longer necessary for the Corporation to continue to exist, he may by order dissolve the Corporation on a day specified in the order (“the dissolution date”).
- (3) Where an order under subsection (2) above provides for the Corporation to be dissolved with effect from a time which would not, apart from this subsection, be the end of a financial year of the Corporation, the financial year of the Corporation which is current at that time shall be deemed to end at that time and that order may contain such provision as the Secretary of State thinks fit for modifying the effect of any enactment with respect to—
  - (a) the preparation of accounts for the financial year of the Corporation ending with its dissolution; and
  - (b) the making and laying before Parliament of a final report relating to the carrying out of the Corporation’s functions during that financial year.
- (4) The Secretary of State shall consult the Corporation and the Authority before making an order dissolving the Corporation.
- (5) Where any person ceases, by virtue of any provision of this section, to be the chairman or a member of the Corporation before his term of office would otherwise have expired—
  - (a) the Secretary of State shall, with the consent of the Treasury, determine an amount to be paid to that person by way of compensation for loss of office; and
  - (b) any amount determined under paragraph (a) above shall be paid to that person—
    - (i) in the case of loss of office by virtue of a notice under subsection (1) (d) above, by the Corporation; and
    - (ii) in the case of loss of office by virtue of the dissolution of the Corporation, by the Secretary of State out of money provided by Parliament.
- (6) Without prejudice to the generality of the powers conferred by virtue of section 12 above, where provision is made by any restructuring scheme for the transfer to any person of any liability of the Corporation under subsection (5) above or under subsection (6) of section 2 of the 1946 Act (salaries, pensions etc. for members), the subsection in question shall have effect subject to the transfer, and the transferred liability shall continue to have effect notwithstanding the coming into force on the dissolution date of any repeal made by this Act.
- (7) Any power to make an order under this section shall be exercisable by statutory instrument; and an order dissolving the Corporation shall not be amended or revoked by any order made on or after the dissolution date.

#### **Commencement Information**

**I2** S. 23 partly in force: s. 23 not in force at Royal Assent but in force on the restructuring date, see s. 68; 31.10.1994 appointed as the restructuring date for the Act, see S.I. 1994/2553, art. 2; S. 23(1)(a)(b)(c) (d) in force at 30.6.1995 by S.I. 1995/1507, art. 3

#### **Marginal Citations**

**M23** 1949 c. 53.

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### *Abolition of the Domestic Coal Consumers' Council*

#### **24 Abolition of the Domestic Coal Consumers' Council.**

- (1) The Domestic Coal Consumers' Council shall cease to exist on such day as the Secretary of State may by order made by statutory instrument appoint.
- (2) The Secretary of State may, out of money provided by Parliament, pay such compensation to the person who is the chairman of the Domestic Coal Consumers' Council when it ceases to exist as the Secretary of State may determine to be appropriate in respect of that person's loss of office.
- (3) The consent of the Treasury shall be required for the making of a determination under subsection (2) above.

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#### **Subordinate Legislation Made**

**P2** Power exercised (1.3.1995) by [S.I. 1995/255](#), [art. 2](#)

## **PART II**

### LICENSING OF COAL-MINING OPERATIONS

#### *Coal-mining operations to be licensed*

#### **25 Coal-mining operations to be licensed.**

- (1) Subject to subsection (3) below, coal-mining operations to which this section applies shall not, at any time on or after the restructuring date, be carried on by any person except under and in accordance with a licence under this Part.
- (2) This section applies to any coal-mining operations in so far as they—
  - (a) consist in the winning, working or getting (with or without other minerals) of any coal, in the treatment of coal in the strata for the purpose of winning any product of coal or in the winning, working or getting of any product of coal resulting from such treatment;
  - (b) are carried on in relation to coal in any part of Great Britain, in relation to coal under the territorial sea adjacent to Great Britain or in relation to coal in any designated area; and
  - (c) are neither carried on exclusively for the purpose of exploring for coal nor confined to the digging or carrying away of coal that it is necessary to dig or carry away in the course of activities carried on for purposes which do not include the getting of coal or any product of coal.
- (3) Subject to the following provisions of this Act and to the provisions of any restructuring scheme, where—
  - (a) a licence under subsection (2) of section 36 of the 1946 Act (licences from the Corporation to work or get coal) is in force immediately before the restructuring date, and
  - (b) that licence authorises the carrying on of any coal-mining operations to which this section applies,

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the authorisation contained in that licence shall have effect on and after that date as an authorisation for the carrying on of those operations without a licence under this Part and, accordingly, so as to prevent the carrying on of any operations under and in accordance with that authorisation from constituting a contravention of subsection (1) above.

- (4) Where any authorisation has effect in accordance with subsection (3) above, it shall so have effect, except to the extent that a restructuring scheme otherwise provides—
- (a) subject to the same conditions and to the same powers of revocation and other provisions for expiry and termination as, immediately before the restructuring date, applied to the licence under section 36(2) of the 1946 Act; but
  - (b) as if the powers of the Corporation under that licence were powers of the Authority.
- (5) In this section “designated area” has the same meaning as in section 8 above.

### *Licences under Part II*

## **26 Grant of licences.**

- (1) Subject to subsection (6) below, it shall be the Authority which shall have the power to grant a licence under this Part.
- (2) An application for a licence under this Part may be made by any person who has acquired, or is proposing to acquire, (whether from the Authority or some other person) —
- (a) such an interest in land comprised in the area with respect to which the application is made, or
  - (b) such rights in relation to coal in that area,
- as, apart from the need for a licence, would entitle him to carry on the coal-mining operations to which the application relates.
- (3) Where any area of Great Britain, of the territorial sea adjacent to Great Britain or of the continental shelf is one—
- (a) interests or rights in or in relation to the whole or any part of which may be acquired (in addition to any such rights as may be contained in a licence under this Part) from the Authority, and
  - (b) in relation to which the Authority considers that it is appropriate to do so,
- the Authority may issue such specific or general invitations as it thinks fit for applications or, as the case may be, further applications to be made in respect of that area for the grant of licences under this Part.
- (4) An applicant for a licence under this Part shall pay to the Authority such fee (if any) in respect of the Authority’s handling of that application as, having regard to—
- (a) the nature of the application, and
  - (b) any information published under section 30 below with respect to the fixing of the fees for handling applications,
- the Authority may reasonably require.
- (5) Without prejudice to the Authority’s power (subject to its duties under sections 2 to 4 above) to take into account all such factors as it thinks fit in determining whether, and subject to what conditions, to grant a licence under this Part, the factors that may be

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taken into account shall include, in particular, the terms on which the applicant, or any other applicant with respect to the same area, is offering to acquire from the Authority any such interests or rights as are mentioned in subsection (2) above.

(6) Where—

- (a) provision is made by any restructuring scheme for any interest or rights in or in relation to any coal or coal mine to be created in any person's favour or to be transferred to any person, and
- (b) that person requires the interest or rights for the purpose of enabling him to continue, resume or begin the carrying on (whether from the coming into force of the scheme or from some future time) of any coal-mining operations,

this Act shall have effect as if the Secretary of State, as well as the Authority, was entitled, at any time before the coming into force of the scheme, to exercise the Authority's power to grant a licence to that person authorising the carrying on of those operations and, for that purpose, was entitled to act on the Authority's behalf in the exercise of any of its other powers.

## **27 Authorisation contained in licence.**

(1) The provisions of a licence under this Part shall specify or describe the coal-mining operations which, subject to its conditions, are authorised by the licence.

(2) The provisions included in a licence in pursuance of subsection (1) above —

- (a) shall identify the area of Great Britain, of the territorial sea adjacent to Great Britain or of the continental shelf where the operations are to be carried on; and
- (b) may restrict the authorisation contained in the licence to operations carried on within such period as may be specified in the licence or as may be determined in a manner so specified;

and provision made by virtue of paragraph (a) above may include restrictions as to the depth at which any operations are to be carried on.

(3) Without prejudice to the generality of subsection (2)(b) above, a licence under this Part may provide—

- (a) for the coming into force of the authorisation contained in the licence, or of any conditions or other provisions of the licence, to be postponed until after the acquisition by the holder of the licence of any interest or right in or in relation to any land or other property or until after such other requirements as may be specified or described in the licence have been satisfied; and
- (b) for the licence to lapse if the interest or right is not acquired, or the other requirements are not satisfied, within such period as may be so specified.

(4) Without prejudice to subsection (5) below, the persons who, so long as the authorisation remains in force, are authorised to carry on the operations to which a licence under this Part relates are the holder of the licence and such other persons as may be authorised by the licence or, without any contravention of the conditions of the licence, by the holder of the licence to carry on those operations on his behalf.

(5) A licence under this Part may contain provision which, in such cases, in such manner and subject to such conditions or consents as may be specified in or required by the provisions of the licence, authorises the transfer of any person's rights and obligations as holder of the licence to another person.

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- (6) Without prejudice to any provision made by virtue of section 28(7) below, the conditions and other provisions of a licence under this Part may be modified by the Authority with the agreement of the holder of the licence.

## **28 Conditions of licence: general.**

- (1) A licence under this Part may include such conditions as the Authority, subject to its having regard to its duties under sections 2 to 4 above and to the following provisions of this Act, may think fit.
- (2) The conditions that may be included in a licence under this Part with respect to the carrying on of the coal-mining operations authorised by the licence shall include conditions having effect in relation to the carrying on, in association with those operations, of—
- (a) coal-mining operations for which no authorisation is required by virtue of this Act;
  - (b) coal-mining operations the authorisation for which is contained in another licence under this Part or is conferred by virtue of section 25(3) above; or
  - (c) any activities carried on for purposes connected with any coal-mining operations to which the conditions relate.
- (3) Conditions included in a licence under this Part may contain provision requiring the holder of the licence to render to the Authority either or both of the following in respect of the exercise of its functions in connection with, or in consequence of, the grant of the licence, that is to say—
- (a) payments on the grant or coming into force of the licence of such amount as may be determined by or under the conditions; and
  - (b) payments, at times while the licence is in force for any of the purposes of this Act, of such amounts as may be so determined.
- (4) Conditions included in a licence under this Part may contain provision requiring the holder of the licence to secure that—
- (a) agreements for such purposes as may be specified in the conditions are entered into between the holder of the licence and such other persons as may be specified or described in the licence; and
  - (b) that the terms of those agreements satisfy such requirements as may be so specified or described.
- (5) Conditions included in a licence under this Part may contain provision requiring the holder of the licence to comply with any direction given by the Authority as to such matters as are specified in the licence or are of a description so specified.
- (6) Conditions included in a licence under this Part may contain provision for disputes between the Authority and the holder of the licence as to any matter to which the licence relates to be referred to the determination of such person or persons as may be specified in, or appointed in accordance with, the conditions; and any dispute to which any such provision applies shall be determined accordingly.
- (7) Conditions included in a licence under this Part may contain provision for any of the following, that is to say—
- (a) the authorisation contained in the licence, and



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- (b) any of the conditions of the licence, apart from any included by virtue of this subsection,
- to cease to have effect, or to be revoked or otherwise modified, at such times, in such manner and in such circumstances as may be specified in or determined under the conditions.
- (8) Conditions included in a licence under this Part may provide for—
- (a) obligations imposed on any person by the conditions of the licence, and
- (b) liabilities arising in respect of contraventions by any person of the conditions so included,
- to continue in accordance with the provisions of that licence, and to be capable of arising, after the authorisation contained in the licence has been revoked or is otherwise no longer in force or, where they have already arisen, to continue after the rights and obligations of the holder of the licence have been transferred to another person.
- (9) Subsections (2) to (8) above and section 29 below shall be without prejudice to the generality of subsection (1) above.

## **29 Conditions for the provision of security.**

- (1) Conditions included in a licence under this Part may include provision requiring the holder of the licence, on or before the coming into force of the authorisation contained in the licence and at such subsequent times as may be determined by or under the conditions—
- (a) to provide such security as may be so determined for his performance of any of the obligations to which he is or may become subject, either in accordance with the licence itself or otherwise by virtue of his being at any time the holder of that licence; and
- (b) for the purposes of that security and in relation to any property or rights in which it consists, to take such steps for or in connection with the establishment and maintenance of any trust or other arrangements as may be so determined.
- (2) Where—
- (a) any security for the performance of any person's obligations has been provided in accordance with any condition included by virtue of subsection (1) above in a licence under this Part, and
- (b) any trust or other arrangements which have, in pursuance of that condition, been established and maintained for the purposes of that security are for the time being registered under section 35(1)(f) below,
- the manner in which, and the purposes for which, that security and any property or rights in which it consists are to be applied and enforceable (whether in the event of that person's insolvency or otherwise) shall be determined in accordance with the trust or other arrangements and without regard to so much of the <sup>M24</sup>Insolvency Act 1986 or any other enactment or rule of law as, in its operation in relation to that person or any conduct of his, would prevent or restrict their being applied in accordance with the trust or other arrangements or would prevent or restrict their enforcement for the purpose of being so applied.

### **Marginal Citations**

**M24** 1986 c. 45.

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### **30 Publication of licensing arrangements.**

- (1) It shall be the duty of the Authority from time to time to publish such details as it thinks fit of—
  - (a) the manner in which it proposes to exercise and perform its powers and duties under the preceding provisions of this Part; and
  - (b) the arrangements it has made for purposes connected with the exercise and performance of those powers and duties.
- (2) The arrangements referred to in subsection (1) above shall include any arrangements made with respect to the receipt and consideration, together with any application for a licence under this Part, of any application to the Authority for such interests or rights in or in relation to land or other property as the applicant may wish to acquire from the Authority for purposes connected with the operations to which the application for the licence relates.
- (3) Without prejudice to the generality of subsection (1) above or to the Authority's power in accordance with the preceding provisions of this Act to incorporate such provision as it may think fit in any licence under this Part, it shall be the duty of the Authority to publish model provisions for inclusion in licences under this Part and to have regard to the published provisions in determining what provision to incorporate in any such licence.
- (4) Anything published under this section shall be published in such manner, and periodically given such further publicity, as appears to the Authority to be appropriate for securing that it is brought to the attention of persons who are likely from time to time to be interested.

### *Enforcement*

### **31 Enforcement orders.**

- (1) Subject to subsections (2) and (5) and section 32 below, where the Authority is satisfied—
  - (a) that any person is carrying on any coal-mining operations in contravention of section 25(1) above, or is likely so to carry on any coal-mining operations, or
  - (b) that any person is contravening, or is likely to contravene, any of the conditions of a licence under this Part,
 the Authority may, by a final enforcement order, make such provision in relation to that person as is requisite for the purpose of securing that there is no contravention of section 25(1) above or, as the case may be, that that condition is complied with.
- (2) Subject to subsection (5) below, where—
  - (a) it appears to the Authority as mentioned in subsection (1)(a) or (b) above, and
  - (b) it appears to the Authority that it is appropriate that a provisional enforcement order be made,
 the Authority may (instead of taking steps towards the making of a final enforcement order) by a provisional enforcement order make such provision in relation to the person in question as appears to it requisite for the purpose of securing that there is no contravention of section 25(1) above or, as the case may be, that the condition is complied with.

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- (3) In determining for the purposes of subsection (2)(b) above whether it is appropriate that a provisional enforcement order be made, the Authority shall have regard, in particular, to the extent to which any person is likely to sustain loss or damage in consequence of anything which, in contravention of section 25(1) above or the condition in question, is likely to be done, or omitted to be done, before a final enforcement order may be made.
- (4) Subject to subsection (5) and section 32 below, where a provisional enforcement order has been made, the Authority shall consider whether, for the purpose of giving it final effect, it should be confirmed and shall be entitled to confirm it, with or without modifications, if—
- (a) it is satisfied that the person to whom the order relates—
    - (i) is carrying on any coal-mining operations in contravention of section 25(1) above, or is likely so to carry on any coal-mining operations; or
    - (ii) is contravening, or is likely to contravene, any of the conditions of a licence under this Part;
- and
- (b) the provision made by the order (with any modifications) is requisite for the purpose of securing that there is no contravention of section 25(1) above or, as the case may be, that that condition is complied with.
- (5) The Authority shall not make a final enforcement order or make or confirm a provisional enforcement order in relation to any person if it is satisfied—
- (a) that that person has agreed to take, and is taking, all such steps as it appears to the Authority for the time being to be appropriate for him to take for the purpose of securing that there is no contravention of section 25(1) above or that the condition in question is complied with; or
  - (b) that the contraventions of section 25(1) above or of that condition were, or the apprehended contraventions are, of a trivial nature.
- (6) An enforcement order—
- (a) shall require the person to whom it relates (according to the circumstances of the case) to do, or not to do, such things as are specified in the order or are of a description so specified;
  - (b) shall take effect at such time, being the earliest practicable time, as is determined by or under the order; and
  - (c) may be revoked at any time by the Authority.
- (7) In this Part—
- “enforcement order” means a final enforcement order or a provisional enforcement order;
  - “final enforcement order” means an order under this section other than a provisional enforcement order; and
  - “provisional enforcement order” means an order under this section which, if not previously confirmed under subsection (4) above, will cease to have effect at the end of such period (not exceeding three months) as is determined by or under the order.
- (8) This section and sections 32 and 33 below shall be without prejudice to the right of the Authority, where the conditions of any licence under this Part contain provision for a sum determined by or under those conditions to be paid to the Authority, to enforce

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that condition in proceedings for the recovery of the sum as an amount due to the Authority by virtue of an enactment.

### **32 Procedural requirements for enforcement orders.**

(1) Before making a final enforcement order or confirming a provisional enforcement order, the Authority shall give notice—

- (a) stating that the Authority proposes to make or confirm the order and setting out its effect;
- (b) setting out—
  - (i) any condition of a licence for the purpose of securing compliance with which the order is to be made or confirmed;
  - (ii) the acts or omissions which, in the Authority’s opinion, constitute or would constitute contraventions of section 25(1) above or, as the case may be, that condition; and
  - (iii) any other matters which, in the Authority’s opinion, justify the making or confirmation of the order;

and

- (c) specifying the period (not being less than twenty-eight days from the date of the service of the notice on the person to whom it relates) within which representations or objections with respect to the proposed order or proposed confirmation may be made;

and, before making or confirming the order, the Authority shall consider any representations or objections which are duly made and not withdrawn.

(2) A notice under subsection (1) above shall be given—

- (a) by serving it, together with a copy of the proposed order or of the order as proposed to be confirmed, on the person to whom the order relates; and
- (b) by taking such steps (if any) for publishing a copy of the notice as the Authority considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them and of enabling them to make representations and objections within the period specified in the notice.

(3) The Authority, having given notice under subsection (1) above, shall not make the final enforcement order with modifications that are not contained in the notice or confirm the provisional enforcement order with any such modifications, except—

- (a) with the consent to the modifications of the person to whom the order relates; or
- (b) after complying with the requirements of subsection (4) below.

(4) The requirements mentioned in subsection (3) above are that the Authority shall—

- (a) serve on the person to whom the order relates such notice as appears to the Authority requisite of its proposal to make or confirm the order with modifications;
- (b) in that notice specify the period (not being less than twenty-eight days from the date of its service on the person to whom the order relates) within which representations or objections with respect to the proposed modifications may be made;
- (c) take such steps (if any) for publishing a copy of the notice as it considers appropriate for the purpose of bringing the proposal to the attention of persons

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- likely to be affected by it and of enabling them to make representations and objections within the period specified in the notice; and
- (d) consider any representations or objections which are duly made and not withdrawn.
- (5) As soon as practicable after making a final enforcement order or making or confirming a provisional enforcement order, the Authority shall—
- (a) serve a copy of the order or, as the case may be, of the order as confirmed on the person to whom it relates; and
- (b) take such steps (if any) for publishing notice of the order and, where the case so requires, of its confirmation and any modifications subject to which it is confirmed as the Authority considers appropriate for the purpose of bringing the matters contained in the notice to the attention of persons likely to be affected by them.
- (6) Before revoking an enforcement order, other than an unconfirmed provisional enforcement order, the Authority shall give notice—
- (a) stating that it proposes to revoke the order and setting out the effect of the order; and
- (b) specifying the period (not being less than twenty-eight days from the date of the service of the notice on the person to whom the order relates) within which representations or objections with respect to the proposed revocation may be made;
- and, before revoking the order, the Authority shall consider any representations or objections which are duly made and not withdrawn.
- (7) If, after giving a notice under subsection (6) above, the Authority decides not to revoke the order to which the notice relates, it shall give notice of its decision.
- (8) A notice under subsection (6) or (7) above shall be given—
- (a) by serving it on the person to whom the order relates; and
- (b) by taking such steps (if any) for publishing a copy of the notice as the Authority considers appropriate for the purpose of bringing the matters contained in the notice to the attention of persons likely to be affected by them and, in the case of a notice under subsection (6) above, of enabling them to make representations and objections within the period specified in the notice.

### **33 Validity and effect of enforcement orders.**

- (1) If the person to whom an enforcement order relates is aggrieved by the order and desires to question its validity on the ground—
- (a) that its making or confirmation was not within the powers conferred by section 31 above, or
- (b) that any of the requirements of section 32 above have not been complied with in relation to it,
- he may, within forty-two days from the date of service on him of a copy of the order or, as the case may be, of the order as confirmed, make an application to the court under this section.
- (2) On any such application the court may, if satisfied that the making or confirmation of the order was not within those powers or that the interests of the applicant have

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been substantially prejudiced by a failure to comply with those requirements, quash the order or any provision of the order.

- (3) Except as provided by this section, the validity of an enforcement order shall not be questioned by any legal proceedings whatever.
- (4) The obligation to comply with an enforcement order shall be a duty owed to any person who may be affected by a contravention of the order.
- (5) Where a duty is owed by any person to another person by virtue of subsection (4) above, any breach of the duty which causes that other person to sustain loss or damage shall be actionable against the person in breach at the suit or instance of that other person.
- (6) In any proceedings brought against any person in pursuance of subsection (5) above, it shall be a defence for him to show that he took all reasonable steps and exercised all due diligence to avoid the contravention of the order.
- (7) Without prejudice to any right which any person may have by virtue of subsection (4) or (5) above to bring civil proceedings in respect of any contravention or apprehended contravention of an enforcement order, compliance with any such order shall be enforceable by civil proceedings by the Authority for an injunction or for interdict or for any other appropriate relief.
- (8) In this section and section 34 below “the court” means the High Court in relation to England and Wales and the Court of Session in relation to Scotland.

### **34 Power to require information for the purposes of enforcement.**

- (1) Where it appears to the Authority—
  - (a) that there is or may have been a contravention of section 25(1) above, or
  - (b) that any person is contravening, or may have contravened, any condition of a licence under this Part,
 the Authority may, for any purpose connected with such of its functions under section 31 above as are exercisable in relation to that matter, serve a notice under subsection (2) below on any person.
- (2) A notice under this subsection is a notice which—
  - (a) requires the person on whom it is served to produce, at a time and place specified in the notice, to the Authority or to any person appointed by the Authority for the purpose, any documents which are specified or described in the notice and are in that person’s possession or under his control; or
  - (b) requires that person, if he is carrying on a business, to furnish the Authority, at a time and place and in the form and manner specified in the notice, with such information as may be specified or described in the notice.
- (3) No person shall be required under this section to produce any documents which he could not be compelled to produce in civil proceedings in the court or, in complying with any requirement for the furnishing of information, to disclose any information which he could not be compelled to give in evidence in any such proceedings.
- (4) A person who without reasonable excuse fails to do anything required of him by a notice under subsection (2) above shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.

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- (5) A person who intentionally alters, suppresses or destroys any document which he has been required by any notice under subsection (2) above to produce shall be guilty of an offence and liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to a fine.
- (6) If a person makes default in complying with a notice under subsection (2) above, the court may, on the application of the Authority, make such order as the court thinks fit for requiring the default to be made good; and any such order may provide that all the costs or expenses of and incidental to the application shall be borne by the person in default or by any officers of a company or other association who are responsible for its default.
- (7) No proceedings shall be instituted in England and Wales in respect of an offence under this section except by or on behalf of the Authority or the Director of Public Prosecutions.

### *Supplemental*

## **35 Register of licences and orders.**

- (1) Subject to subsections (2) and (3) below, the Authority shall establish and maintain a register in which it shall enter particulars of—
  - (a) every licence granted under this Part and every pending application for such a licence;
  - (b) every licence in pursuance of which any person is or has been entitled to carry on coal-mining operations by virtue of section 25(3) above;
  - (c) every transfer, in accordance with the provisions of a licence under this Part, of the rights and obligations of any person as the holder of that licence;
  - (d) every revocation of, or of the authorisation contained in, a licence falling within paragraph (a) or (b) above;
  - (e) every other such modification of a licence falling within paragraph (a) or (b) above as relates to the particulars of that licence which are entered in the register;
  - (f) such trusts and other arrangements as for the time being have effect for the purposes of any security provided under the conditions included in licences under this Part in pursuance of the Authority's duty under section 2(1)(c) above; and
  - (g) every enforcement order made under section 31 above, every confirmation of a provisional enforcement order, the terms on which every confirmed order is confirmed and every revocation of an enforcement order.
- (2) The particulars entered in the register in relation to any licence shall be confined to—
  - (a) the date of the grant of the licence and the time of the coming into force of the authorisation contained in the licence;
  - (b) the identity of the person to whom the licence is granted and a description of any other persons who are entitled, under the licence, to carry on the coal-mining operations to which it relates;
  - (c) the area to which the authorisation contained in the licence relates;

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- (d) any restrictions contained in the licence as to the depth at which the coal-mining operations authorised by the licence may be carried on;
  - (e) any other provisions of the licence restricting the coal-mining operations that are authorised by the licence to specified descriptions of operations;
  - (f) any area designated by the licence under section 37 below as the area of responsibility of the holder of the licence;
  - (g) any provision included in the licence for the purposes of section 58 below and any conditions requiring the disclosure of information which may be of the description specified for those purposes; and
  - (h) any provisions of the licence for the expiry of the authorisation contained in the licence or for determining when an area ceases to be the area of responsibility of the holder of the licence.
- (3) The particulars entered in the register in relation to any pending application for a licence under this Part shall be confined to so much of the application as contains proposals with respect to any of the matters mentioned in subsection (2) above.
- (4) The particulars entered in the register in relation to any trust or other arrangements falling within subsection (1)(f) above shall be confined to particulars identifying the form (but not the value or amount) of the security in question, the person who provided the security and the trustees or other person responsible for administering the security or determining the use to which it is put.

### **36 Insolvency of licensed operators etc.**

- (1) A licence under this Part and the obligations arising out of, or incidental to, such a licence shall not be treated as property for any of the purposes of the <sup>M25</sup>Insolvency Act 1986 (“the 1986 Act”); but this subsection shall be without prejudice to so much of any licence as, by virtue of section 27(4) or (5) above, authorises the official receiver or any person who is for the time being acting as an insolvency practitioner in relation to the holder of the licence to carry on any of the coal-mining operations to which the licence relates or to transfer the rights and obligations of the holder of the licence to another person.
- (2) Where, in the case of the winding up of a company which is or has been a licensed operator, the liquidator or official receiver sends to the registrar of companies—
- (a) any such account or return as is mentioned in section 94(3) or 106(3) of the 1986 Act (account of the winding up and return of final meeting or meetings),
  - (b) any notice for the purposes of section 172(8) of that Act (notice of final meeting and of its decisions),
  - (c) an application under section 202(2) of that Act (applications for early dissolution),
  - (d) a copy of such an order for dissolution of the company as is mentioned in section 204(4) of that Act (order for early dissolution in Scotland), or
  - (e) such a notice as is mentioned in section 205(1)(b) of that Act (notice that winding up complete),
- the liquidator or official receiver, on sending it to the registrar of companies, shall also send a copy to the Authority.
- (3) A liquidator who contravenes subsection (2) above shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.



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- (4) In any proceedings against any person for an offence under subsection (3) above it shall be a defence for that person to show that at the time of the contravention he did not know and had no grounds for suspecting that the company in question had ever been a licensed operator.
- (5) In the case of any company which is either—
- (a) the holder of a licence under this Part, or
  - (b) a licensed operator by virtue of section 25(3) above,
- the Authority shall be included in the persons who are entitled to make an application under section 651(1) or 653(2) of the <sup>M26</sup>Companies Act 1985 (application to cancel the dissolution of a company) or under section 201(3), 202(5), 204(5) or 205(3) or (5) of the 1986 Act (applications in the case of a winding up for the deferment of a company's dissolution).
- (6) Accordingly, subsection (1) of section 653 of that Act of 1985 (section to apply where specified persons feel aggrieved) shall be disregarded where an application under subsection (2) of that section is made by virtue of subsection (5) above.
- (7) In this section “registrar of companies” has the same meaning as in the <sup>M27</sup>Companies Act 1985; and the reference in subsection (1) above to a person's acting as an insolvency practitioner shall be construed in accordance with section 388 of the 1986 Act.

#### Marginal Citations

**M25** 1986 c. 45.

**M26** 1985 c. 6.

**M27** 1985 c. 6.

## PART III

### RIGHTS AND OBLIGATIONS IN CONNECTION WITH COAL MINING

#### *Areas of responsibility*

#### **37 Areas of responsibility.**

- (1) A licence under Part II of this Act may designate, in relation to the person who is the holder of the licence, the area which is to be treated for the purposes of this Part as that person's area of responsibility.
- (2) The area designated under this section may comprise—
- (a) the whole or any one or more parts of the area where the operations to which the licence relates are to be carried on; or
  - (b) the whole or any parts of that area together with such other areas appearing to the Authority to be capable of being affected by those operations as may be described in the licence.
- (3) Subject to subsection (4) below, an area designated under this section as an area of responsibility shall continue to be treated for the purposes of this Part as the area

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of responsibility of the holder of the licence in question until such time as may be determined, in accordance with the provisions of the licence, to be the time for responsibilities in respect of the designated area to revert (subject to any further designation of the whole or any part of that area) to the Authority.

- (4) The conditions included in a licence under Part II of this Act may provide for the modification from time to time of the area of responsibility of the holder of the licence.
- (5) For the purposes of subsection (3) above it shall be immaterial that the authorisation contained in the licence in question is revoked or otherwise ceases to have effect before the time determined for the purposes of that subsection.

### *Withdrawal of support from land*

## **38 Rights to withdraw support.**

- (1) Subject to the following provisions of this Part, on and after the restructuring date, any licensed operator shall be entitled, so far as may be reasonably requisite for the carrying on of any coal-mining operations to which section 25 above applies, to withdraw support from any land to which this section applies.
- (2) This section applies to any land, not being land comprised in an underground coal mine, if—
  - (a) a notice under this section relating to that land has been given in accordance with section 39 below and has come into force;
  - (b) immediately before the restructuring date the Corporation was entitled under and in accordance with section 2 of the 1975 Act (rights to withdraw support) to withdraw support from that land; or
  - (c) the following conditions are satisfied, that is to say—
    - (i) the relevant date of publication of a notice under section 2 of the 1975 Act relating to that land is a date not more than three months before the restructuring date;
    - (ii) the Corporation would (apart from subsection (7) below) have become entitled as mentioned in paragraph (b) above at the end of the period of three months beginning on the relevant date of publication; and
    - (iii) that period has expired;
 and a right under this section shall have effect whether the coal in relation to which the operations concerned are carried on lies under the land to which this section applies or under adjacent land.
- (3) A notice under this section shall come into force with whichever is the later of the following, that is to say—
  - (a) the expiry of the period of three months beginning with the day after the relevant date of publication; and
  - (b) the time when particulars of the notice are first registered by the Authority in accordance with section 56 below.
- (4) In the case of any licensed operator who is entitled by virtue of this section to withdraw support from any land, the rights comprised in his entitlement shall also be exercisable by any person authorised as mentioned in section 27(4) above to act on his behalf in the carrying on of any of the operations which the operator is authorised to carry on.

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- (5) In this section and section 39 below “relevant date of publication”—
- (a) in relation to a notice under section 2 of the 1975 Act, has the same meaning as in that section; and
  - (b) in relation to a notice under this section, means whichever is the later of—
    - (i) the date of the publication of the notice in the London or Edinburgh Gazette; and
    - (ii) the date of the first of the publications for the purposes of section 39(3)(b) below.
- (6) In this section “underground coal mine” means any coal mine which is a mine within the meaning of the <sup>M28</sup>Mines and Quarries Act 1954.
- (7) Subject to the preceding provisions of this section, the rights conferred on the Corporation by section 2 of the 1975 Act shall not be exercisable at any time on or after the restructuring date.

**Marginal Citations**

**M28** 1954 c. 70.

**39 Notices under section 38.**

- (1) A notice under section 38 above shall not be given except—
- (a) by a person who on the relevant date of publication is a licensed operator and, as the holder of a licence under Part II of this Act, has an area of responsibility that consists of or includes all the land to which the notice relates; or
  - (b) by a person who on that date—
    - (i) is authorised by such a licence, or by virtue of subsection (3) of section 25 above, to carry on coal-mining operations to which that section applies; and
    - (ii) has the approval of the Authority for the giving of a notice relating to the land in question.
- (2) A notice under section 38 above—
- (a) shall indicate the land to which it relates either by reference to a map or in any other manner which, in the circumstances, is sufficient to identify it;
  - (b) shall identify the person by whom the notice is given and summarise the respects in which the requirements of subsection (1) above are satisfied in relation to that person; and
  - (c) shall state that there are proposals to carry on coal-mining operations which may require the exercise in relation to that land of such a right as is mentioned in section 38(1) above.
- (3) A notice under section 38 above shall be given by being published—
- (a) in the London Gazette or the Edinburgh Gazette, according to whether the land to which the notice relates is in England and Wales or in Scotland; and
  - (b) at least once in each of two successive weeks, in newspapers circulating in the locality where that land is situated.
- (4) Not later than the relevant date of publication of a notice under section 38 above, the person giving that notice shall—

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- (a) serve a copy of the notice on every planning authority within whose area or district any part of the land to which the notice relates is situated; and
  - (b) post a copy or copies of the notice in some conspicuous place or places on that land.
- (5) In subsection (4) above “planning authority” means any local planning authority within the meaning of the <sup>M29</sup>Town and Country Planning Act 1990 or any planning authority within the meaning of Part IX of the <sup>M30</sup>Local Government (Scotland) Act 1973.

#### Marginal Citations

**M29** 1990 c. 8.

**M30** 1973 c. 65.

#### 40 Savings for special cases.

- (1) Where the Corporation is bound, immediately before the restructuring date, by—
- (a) the provisions of an agreement which—
    - (i) was made between the Corporation or any predecessor of the Corporation and a person who (within the meaning of the <sup>M31</sup>Coal Act 1938) was interested in any land, and
    - (ii) has effect so as to require the Corporation to comply with an undertaking which is contained in the agreement and is an undertaking not to work any coal, not to work minerals or not to withdraw support from any land,
  - (b) any provisions containing any restriction, terms or conditions applicable to the working of coal by virtue of any agreement entered into after 1st July 1942 and before the restructuring date, or
  - (c) the provisions of any coal-mining lease (within the meaning of that Act of 1938) prohibiting the withdrawal of support from any land specified in the lease,
- section 38 above shall have effect subject to those provisions, but only so far as they have effect in relation to the Corporation or any other person who is for the time being bound by them.
- (2) Section 38 above shall not affect any restrictions, terms or conditions applicable to the working of coal by virtue of—
- (a) any order made (whether before or after the restructuring date) under section 1 or 7 of the <sup>M32</sup>Mines (Working Facilities and Support) Act 1966 (acquisition of rights to work minerals); or
  - (b) section 33 of the <sup>M33</sup>Coal Act 1938 (restriction on working of coal vested in statutory undertakers) or any consent required by virtue of that section;
- and section 38 above shall be without prejudice to the effect in relation to any restrictions, terms or conditions falling within paragraph (a) or (b) above of the provisions of any restructuring scheme.
- (3) Section 38 above shall have effect subject to any such right as was referred to in section 34(1) of the <sup>M34</sup>Coal Act 1938 (statutory and corresponding rights of the Crown, local authorities and statutory undertakers) and is a right to which the activities of the Corporation were subject immediately before the restructuring date.

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- (4) Nothing in section 38 above shall confer any entitlement to withdraw support in connection with the working of any coal or coal mines comprised in land in the Forest of Dean or any other part of the area of what was the Hundred of Saint Briavels in the county of Gloucester, being land in respect of which the privileges of free miners are exercisable.
- (5) References in this section, in relation to an agreement which has effect with respect to the working of any coal, to a predecessor of the Corporation are references to the Coal Commission or the person in whom the fee simple of the coal (or, in Scotland, the interest of proprietor of the *dominium utile* of the coal) was vested when the agreement was entered into.
- (6) The reference in subsection (5) above to a person in whom the interest of proprietor of the *dominium utile* was vested when the agreement was entered into shall, as regards coal in the undivided ownership of the Crown at that time, be construed as a reference to the Crown.
- (7) Nothing in this Act or in any other enactment shall be taken as preventing any person from entering, at any time on or after the restructuring date, into an agreement by virtue of which he accepts a prohibition or restriction on the exercise of his rights under section 38 above.

#### Marginal Citations

- M31 1938 c. 52.
- M32 1966 c. 4.
- M33 1938 c. 52.
- M34 1938 c. 34.

## 41 Revocation of right to withdraw support.

- (1) Where the Authority gives a notice under this section in relation to any land to which section 38 above applies, that section shall cease to apply to that land in relation to any coal-mining operations carried on after the relevant date of publication.
- (2) The Authority shall not give a notice under this section unless it appears to the Authority that there is not for the time being any person who is authorised, by a licence under Part II of this Act or by virtue of section 25(3) above, to carry on coal-mining operations which might involve the withdrawal of support from the land in question.
- (3) A notice under this section—
  - (a) shall indicate the land to which it relates either by reference to a map or in any other manner which, in the circumstances, is sufficient to identify it;
  - (b) shall state that section 38 above is to cease to apply to the land; and
  - (c) shall be given by being published—
    - (i) in the London Gazette or the Edinburgh Gazette, according to whether the land to which the notice relates is in England and Wales or in Scotland; and
    - (ii) at least once in each of two successive weeks, in newspapers circulating in the locality where that land is situated.

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- (4) Not later than the relevant date of publication of a notice under this section, the Authority shall serve a copy of the notice on every planning authority within whose area or district any part of the land to which the notice relates is situated.
- (5) Subsection (1) above shall be subject to the effect of any notice under section 38 above which is given at any time after the relevant date of publication of the notice under this section.
- (6) In this section—
- “planning authority” means any local planning authority within the meaning of the <sup>M35</sup>Town and Country Planning Act 1990 or any planning authority within the meaning of Part IX of the <sup>M36</sup>Local Government (Scotland) Act 1973; and
- “relevant date of publication”, in relation to a notice under this section, means whichever is the later of—
- (a) the date of the publication of the notice in the London or Edinburgh Gazette; and
- (b) the date of the first of the publications of that notice for the purposes of subsection (3)(c)(ii) above.

**Marginal Citations**

**M35** 1990 c. 8.

**M36** 1973 c. 65.

*Subsidence*

**42 Subsidence damage to which 1991 Act applies.**

- (1) Section 1 of the 1991 Act (preliminary) shall have effect so far as it relates to operations carried on at any time on or after the restructuring date with the substitution for subsection (3) (meaning of “lawful coal-mining operations”) of the following subsection, that is to say—

“(3) In subsection (1) above “lawful coal-mining operations” means any coal-mining operations to which section 25 of the Coal Industry Act 1994 applies (including operations carried on in contravention of subsection (1) of that section and those that are actionable apart from this Act) which—

- (a) are carried on by a person who is for the time being a licensed operator within the meaning of that Act; or
- (b) are carried on by a person who has been such a licensed operator and in continuation of operations begun by that person before he ceased to be such an operator;

but for the purposes of this subsection any operations carried on or begun by any person as a person who is for the time being authorised to carry on coal-mining operations on behalf of a person who is or has been a licensed operator shall be treated as carried on or begun by the latter person, whether or not the authorisation extends to the operations in question.”

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- (2) Sections 34 and 35 of the 1991 Act (which make provision with respect to the construction of any building, structure or works on land from which the Corporation is entitled to withdraw support) shall cease to have effect on the restructuring date.

#### **43 Persons responsible for subsidence.**

- (1) Except where Schedule 6 to this Act otherwise provides, the 1991 Act and the regulations under that Act which are in force immediately before the restructuring date shall have effect on and after that date with the substitution, in relation to any subsidence damage, for references to the Corporation of references to the person who is the responsible person in relation to that damage.
- (2) Subject to the following provisions of this section and to section 44 below, the responsible person, in relation to any subsidence damage, shall for the purposes of this Part be—
- (a) the person with responsibility for subsidence affecting the land which has been damaged or, as the case may be, the damaged part of it; or
  - (b) in the case of damage to other property, the person with responsibility for subsidence affecting the land where that property or, as the case may be, the damaged part of it was situated at the time of the damage.
- (3) For the purposes of this Part, the person with responsibility for subsidence affecting any land shall be—
- (a) where that land is for the time being within the area of responsibility of any person as the holder of a licence under Part II of this Act, that person; and
  - (b) in any other case, the Authority.
- (4) For the purposes of this Part a person is the responsible person in relation to any subsidence damage whether that damage was caused or occurred before or after the time when that person became the person with responsibility for subsidence affecting the land in question.
- (5) Accordingly, but subject to section 44 below, where, by virtue of any designation or of any transfer of rights and obligations or of the operation of any such provision as is mentioned in section 37(3) above, any person (“the successor”) becomes the person with responsibility for subsidence affecting any land—
- (a) all the rights and liabilities under the 1991 Act, or under any regulations made under that Act or this Part, of the successor’s predecessor as the person with responsibility for subsidence affecting that land (“the predecessor”) shall be transferred, by virtue only of his becoming the person with responsibility, to the successor; and
  - (b) anything which—
    - (i) has been done under or for any of the purposes of the 1991 Act or those regulations by or in relation to the predecessor, or
    - (ii) is deemed to have been so done,shall be deemed, so far as necessary for that purpose and for the purposes of the continuation by or against the successor of any proceedings under or for the purposes of that Act or those regulations, to have been done by or in relation to the successor.
- (6) It shall be the duty of a person who becomes as mentioned in subsection (5) above the person with responsibility for subsidence affecting any land to take all reasonable

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steps to secure that the change in the person with that responsibility does not result in any undue delay in the performance of any obligations falling by virtue of that change to be performed by that person.

- (7) Subsections (5) and (6) above shall have effect in relation to the coming into force of subsection (1) above on the restructuring date as they have effect in relation to any other transfer of rights and obligations but as if the references to the predecessor were references to the Corporation.
- (8) Schedule 6 to this Act shall have effect for making provision, in addition to or instead of that made by subsection (1) above, for or in connection with the modification of references to the Corporation in the 1991 Act.

#### **44 Cases where there is more than one responsible person.**

- (1) Where, in the case of any subsidence damage, the area of responsibility of any person as holder of a licence under Part II of this Act includes only part of the damaged land or, as the case may be, of the land where the damaged property was situated, then for the purposes of this Part—
  - (a) that person, together with—
    - (i) every other person within whose area of responsibility any part of that land is situated, and
    - (ii) if any part of that land is not situated within the area of responsibility of any person, the Authority,
 shall be the responsible persons in relation to that damage; and
  - (b) the obligations and liabilities by virtue of section 43 above of the responsible person shall be obligations and liabilities imposed jointly and severally on the persons mentioned in paragraph (a) above.
- (2) Subsection (5) of section 43 above shall have effect as modified by subsection (3) below in any case where—
  - (a) a person ceases at any time to be the person with responsibility for subsidence affecting any land but continues, after that time, to be the person with responsibility for subsidence affecting other land; and
  - (b) the effect of subsection (1) above in relation to the circumstances specified in paragraph (a) above is that both the predecessor and the successor are responsible persons in relation to any subsidence damage to which any of the predecessor's rights or liabilities relate.
- (3) In any case where, by virtue of subsection (2) above, this subsection has effect—
  - (a) the rights and liabilities of the predecessor, so far as they relate to subsidence damage in relation to which the predecessor continues to be a responsible person, shall continue to be vested in the predecessor, as well as being vested in the successor; and
  - (b) subsection (5) of section 43 above shall not authorise the continuation against the successor of any proceedings under or for the purposes of the 1991 Act which—
    - (i) have been begun, or are deemed to have been begun, against the predecessor; and
    - (ii) may be continued against the predecessor by virtue of paragraph (a) above;



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but paragraph (b) above shall be without prejudice to any rules of court in accordance with which the successor may be joined as a party to any proceedings in respect of any such rights or liabilities as are mentioned in paragraph (a) above.

- (4) In subsection (1) above the reference to the damaged land and to the damaged property are references, where only part of the land or property has been damaged, to the damaged part of that land or property.

#### **45 Information to be provided by responsible persons.**

- (1) The Secretary of State may by regulations make provision imposing requirements on a person with responsibility for subsidence affecting any land—
- (a) to furnish information, on request, to the owner or occupier of any part of that land;
  - (b) to furnish information to the Authority about any such request for information relating to, or to the possibility of, subsidence damage as is made otherwise than by the owner or occupier of any part of that land;
  - (c) to notify a person who has made a request to which regulations made by virtue of paragraph (b) above apply of its being forwarded to the Authority in pursuance of those regulations; and
  - (d) to ensure that such forms and documents as may be described in the regulations accompany information furnished under the regulations.
- (2) Regulations under this section may contain such provision as the Secretary of State thinks fit with respect to—
- (a) the descriptions of information to which any request made for the purposes of any such regulations is to be confined; and
  - (b) the particulars to be included in, or omitted from, information furnished in accordance with any such regulations.
- (3) In this section the reference to an owner, in relation to any land, shall be construed in accordance with section 52(1) of the 1991 Act (interpretation); and section 50 of the 1991 Act (regulations and orders) shall apply in relation to the power to make regulations under this section as it applies in relation to any power of the Secretary of State to make regulations under that Act.
- (4) In subsection (5)(c) of section 46 of the 1991 Act and subsection (4)(c) of section 47 of that Act (regulations with respect to information which is to accompany notices), for “which is”, in each case, there shall be substituted “, forms and documents which are”.

#### **46 The subsidence adviser.**

- (1) The Secretary of State may by regulations make such provision as he considers necessary or expedient—
- (a) for the appointment of an independent person (“the subsidence adviser”) to carry out, in prescribed cases, the functions specified in subsection (2) below; and
  - (b) for regulating and facilitating the carrying out of those functions by the subsidence adviser.
- (2) The functions referred to in subsection (1) above are—

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- (a) the provision of advice and assistance to persons (other than those with responsibility for subsidence affecting land) in connection with the making of complaints, or the taking of any other steps, in relation to any matter arising under the 1991 Act or any question falling within section 47(1) below;
  - (b) the making to persons with responsibility for subsidence affecting land of recommendations as to the manner in which they conduct themselves where such a matter has arisen or any such question falls to be determined;
  - (c) the making of reports dealing generally with the way in which persons with responsibility for subsidence affecting land conduct themselves where such matters arise or such questions fall to be determined; and
  - (d) the making of reports about the carrying out by the subsidence adviser of his functions, whether in particular cases or generally.
- (3) Without prejudice to the generality of subsection (1) above, regulations under this section may contain provision which, in prescribed cases, requires—
- (a) the publication by the subsidence adviser of his recommendations and reports; and
  - (b) the giving, to persons concerned with any matter being handled by the subsidence adviser, of opportunities for making representations and objections.
- (4) It shall be the duty of the Authority to furnish the subsidence adviser with all such information and assistance as he may reasonably require in respect of any case in which the Authority is the person with responsibility for subsidence affecting the land in question.
- (5) The Secretary of State may by regulations make provision for—
- (a) expenses incurred by the subsidence adviser in the carrying out of his functions, and
  - (b) the expense of making payments to or in respect of him by way of remuneration or otherwise,
- to be met, in whole or in part, by some or all of the persons with responsibility for subsidence affecting land or in such other manner as may be prescribed.
- (6) The provision that may be contained in regulations under this section shall include—
- (a) provision for any matter to which the regulations relate to be determined by the Authority in such manner, and by reference to such factors, as may be described in the regulations; and
  - (b) provision, where any expenses are to be met by the Authority in accordance with the regulations, for amounts in respect of those expenses to be recoverable by the Authority from other persons with responsibility for subsidence affecting land.
- (7) In this section “prescribed” means prescribed by regulations under this section; and section 50 of the 1991 Act (regulations and orders) shall apply in relation to the powers to make regulations under this section as it applies in relation to any power of the Secretary of State to make regulations under that Act.
- (8) The supplementary, incidental and transitional provision that may be contained, by virtue of subsection (7) above, in regulations under this section may include transitional provision in relation to matters arising under the 1991 Act at times before the restructuring date.

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#### **47 Disputes etc. as to subsidence matters.**

- (1) The questions that may be referred to the Lands Tribunal under section 40 of the 1991 Act (disputes generally) shall include—
  - (a) any question as to who is the person with responsibility for subsidence affecting particular land;
  - (b) the question whether there has been a contravention of any subsidence requirement; and
  - (c) the question how any such contravention is to be remedied.
- (2) The Secretary of State may by regulations make such provision as he considers appropriate—
  - (a) for establishing procedures that facilitate the making, by agreement or in accordance with regulations made by virtue of paragraph (b) below, of references to such arbitration as may be prescribed of questions arising under the 1991 Act or falling within subsection (1) above;
  - (b) for enabling any such question to be referred to and determined by arbitration in a case where (but for the regulations) it would fall to be referred to the Lands Tribunal on account of a failure by the person whose interest in it derives from the fact or assertion that he is a person with responsibility for subsidence affecting land to agree to the arbitration or to any other method of determining the question; and
  - (c) for regulating the conduct of arbitrations to which questions are referred in accordance with regulations under this subsection.
- (3) Subsections (2) and (3) of section 40 of the 1991 Act (burden of proof and incidental powers) shall apply for the determination of a question falling within subsection (1) above as they apply for the determination of questions arising under the 1991 Act.
- (4) Subject to subsection (5) below, where a question falling within subsection (1) above is referred to the Lands Tribunal or in accordance with any regulations under subsection (2) above to arbitration, the powers of that Tribunal or of the arbitrator or arbiter shall include (in addition to any powers conferred by virtue of subsection (3) above)—
  - (a) power to have such regard as may appear appropriate to any recommendations or report made by virtue of any regulations under section 46 above;
  - (b) power by order to require a person with responsibility for subsidence affecting land to take such steps for remedying any contravention of a subsidence requirement as that Tribunal, arbitrator or arbiter may direct; and
  - (c) power to award compensation of an amount not exceeding £5,000 in respect of any such inconvenience caused to a person by a contravention of a subsidence requirement as does not fall to be compensated for apart from this paragraph.
- (5) In the application of subsection (4)(b) above to an arbitration in so far as relating to subsidence affecting land in Scotland, the words “by order” shall be disregarded and the reference to requiring the person to take remedial steps shall not be construed as prejudicing any other provision of Scots law as respects enforcement of a decree arbitral.
- (6) The Secretary of State may by order substitute a higher amount for the amount for the time being specified in subsection (4)(c) above.
- (7) The Secretary of State may by regulations make provision—

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- (a) for the expenses of maintaining procedures for the purposes of any regulations under subsection (2) above to be met, in whole or in part, by some or all of the persons with responsibility for subsidence affecting land or in such other manner as may be prescribed; and
  - (b) for one or more of the parties to a reference in accordance with any such regulations to be required to pay, or to make a contribution towards, the costs and other expenses incurred in relation to that reference by any person.
- (8) The provision that may be contained in regulations under this section shall include—
- (a) provision for any matter to which the regulations relate to be determined by the Authority in such manner, and by reference to such factors, as may be described in the regulations; and
  - (b) provision, where any expenses are to be met by the Authority in accordance with the regulations, for amounts in respect of those expenses to be recoverable by the Authority from other persons with responsibility for subsidence affecting land.
- (9) References in this section to a contravention of a subsidence requirement are references to any contravention by a person with responsibility for subsidence affecting any land of any of the following requirements, that is to say—
- (a) the requirements imposed on such a person by or under the 1991 Act or by any regulations under section 45 above;
  - (b) the requirement imposed by section 43(6) above;
  - (c) the requirement under paragraph 1 of Schedule 6 to this Act to forward a damage notice to the Authority as soon as reasonably practicable after receiving it; and
  - (d) the requirement to comply with an order made by virtue of subsection (4) (b) above (or, as respects the application of that subsection mentioned in subsection (5) above, a decree granted by virtue of subsection (4)(b) or section 40(3)(a) of the 1991 Act (orders of the Lands Tribunal).
- (10) In this section—
- “the Lands Tribunal”, in relation to Scotland, means the Lands Tribunal for Scotland; and
  - “prescribed” means prescribed by regulations under this section;
- and section 50 of the 1991 Act (regulations and orders) shall apply in relation to the powers to make regulations under this section, and the power to make orders under subsection (6) above, as it applies in relation to any power of the Secretary of State to make regulations or orders under that Act.
- (11) The transitional provision that may be included, by virtue of subsection (10) above, in regulations under this section may include provision in relation to questions arising in relation to times before the restructuring date.

#### **48 Offences with respect to subsidence information.**

- (1) A person shall be guilty of an offence under this section if he engages in any conduct falling within subsection (2) below for the purpose of—
- (a) obtaining for himself or any other person any benefit under the 1991 Act; or
  - (b) facilitating the temporary or permanent avoidance, by himself or any other person, of the whole or any part of—
    - (i) any obligation under that Act;

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- (ii) any other requirement mentioned in section 47(9)(a) to (c) above; or
  - (iii) any liability for contravention of any such obligation or requirement.
- (2) A person engages in conduct falling within this subsection if he—
  - (a) furnishes any other person whatever with any information which he knows to be false in a material particular;
  - (b) recklessly furnishes any other person whatever with any information which is false in a material particular; or
  - (c) with intent to deceive, withholds any information from any person whatever.
- (3) A person who is or has been a licensed operator shall be guilty of an offence under this section if he—
  - (a) furnishes the Authority with any subsidence information which he knows to be false in a material particular;
  - (b) recklessly furnishes the Authority with any subsidence information which is false in a material particular; or
  - (c) with intent to deceive, withholds any subsidence information from the Authority.
- (4) In subsection (3) above “subsidence information”, in relation to a person who is or has been a licensed operator, means information relating to the extent of the existing or potential liabilities of that person in respect of subsidence damage.
- (5) Any person who fails to give, in accordance with section 46 or 47 of the 1991 Act (notice to property owners etc. and local authorities), any notice that he is required to give under that section shall be guilty of an offence under this section.
- (6) In any proceedings against a person for an offence by virtue of subsection (5) above it shall be a defence for that person to show that he took such steps as were reasonable to avoid the commission of the offence.
- (7) A person guilty of an offence under this section shall be liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to a fine.

#### *Rights in relation to former copyhold land*

### **49 Rights to work coal in former copyhold land.**

- (1) Where—
  - (a) any coal or coal mine is comprised in or lies under land which was formerly copyhold, and
  - (b) a notice (“a relevant notice”) specifying the area in which that land is comprised—
    - (i) has been given in accordance with section 50 below and has come into force, or
    - (ii) has been published, before the restructuring date, in accordance with section 3 of the 1975 Act (which contains provision equivalent to the provision contained in this section),

the relevant person shall have the like right in relation to that coal or coal mine to carry on coal-mining operations to which section 25 above applies as if all retained interests in that coal or mine subsisting on 31st August 1975 were vested in him,

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notwithstanding that they are, by virtue of any enactment, in fact vested in another person.

- (2) For the purposes of this section the relevant person, in relation to any relevant notice, is—
- (a) in the case of a notice given in accordance with section 50 below, the person who gave the notice; and
  - (b) in the case of a notice published in accordance with section 3 of the 1975 Act, the Corporation.
- (3) In so far as—
- (a) a person other than the relevant person is for the time being a licensed operator in relation to the coal or mine which is comprised in, or lies under, the land comprised in the area specified in a relevant notice, and
  - (b) compensation under Part I of Schedule 7 to this Act or, in relation to times before the restructuring date, under section 3(4) of the 1975 Act either—
    - (i) has become due in respect of any retained interest affected by that notice and has been paid in full, or
    - (ii) would have become due in respect of such an interest but for an agreement under paragraph 8 of Schedule 7 to this Act or paragraph 8 of Schedule 2 to the 1975 Act,
 the person mentioned in paragraph (a) above shall be entitled (instead of the relevant person) to exercise the relevant person’s rights by virtue of subsection (1) above.
- (4) In the case of any licensed operator who is entitled by virtue of this section to carry on any coal-mining operations in relation to any coal or coal mine, the rights comprised in his entitlement shall also be exercisable by any person authorised as mentioned in section 27(4) above to act on his behalf in the carrying on of any of the operations which the operator is authorised to carry on.
- (5) Nothing in this section shall confer any such right as is mentioned in section 9(1)(b) above or be taken to authorise a contravention of section 25(1) above or of any of the conditions of a licence under Part II of this Act; and the rights that are conferred on the Corporation by this section shall have effect subject to any transfer of those rights, in accordance with any restructuring scheme, to any other person.
- (6) A notice given for the purposes of this section at any time on or after the restructuring date shall come into force when particulars of it are first registered by the Authority in accordance with section 56 below.
- (7) Schedule 7 to this Act shall have effect with respect to compensation and certain other matters in cases in which a relevant notice is given or has been published.
- (8) In this section and section 50 below and in Schedule 7 to this Act “retained interest” means any retained interest within the meaning of the <sup>M37</sup>Coal Act 1938.
- (9) Subject to the preceding provisions of this section, the rights conferred on the Corporation by section 3 of the 1975 Act shall not be exercisable at any time on or after the restructuring date.

#### Marginal Citations

M37 1938 c. 52.

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**Status:** Point in time view as at 22/08/1996. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** There are currently no known outstanding effects for the Coal Industry Act 1994. (See end of Document for details)

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## **50 Notices under section 49.**

- (1) This section applies with respect to the giving of a notice for the purposes of section 49 above at any time on or after the restructuring date.
- (2) The only person who may give the notice is a person who is authorised by a licence under Part II of this Act or by virtue of section 25(3) above to carry on coal-mining operations in the area specified in the notice.
- (3) The notice—
  - (a) shall indicate the land to which it relates either by reference to a map or in any other manner which, in the circumstances, is sufficient to identify it;
  - (b) shall identify the person by whom the notice is given and summarise the respects in which the requirements of subsection (2) above are satisfied in relation to that person;
  - (c) shall state that there are proposals to carry on coal-mining operations in relation to any coal or coal mine which may require the exercise in relation to that land of such a right as is mentioned in section 49(1) above; and
  - (d) shall invite the owners of retained interests in any coal or coal mine comprised in or lying under the land in the area to which the notice relates to give notice of their interests, within the period which begins with the date of the first publication of the notice in accordance with subsection (4) below and ends six years after the coming into force of the notice in accordance with section 49(6) above, to the person who gave the notice.
- (4) The notice shall be given by being published—
  - (a) in the London Gazette; and
  - (b) at least once in each of two successive weeks, in newspapers circulating in the locality where the land to which the notice relates is situated.

### *Additional rights in relation to underground land*

## **51 Additional rights in relation to underground land.**

- (1) Subject to the following provisions of this section—
  - (a) a licensed operator, or
  - (b) any person authorised as mentioned in section 27(4) above to act on his behalf in the carrying on of any of the operations which the operator is authorised to carry on,shall be entitled, at any time on or after the restructuring date, to exercise the right conferred by this section in relation to any underground land in the area in which the operator in question is authorised to carry on coal-mining operations.
- (2) Subject to the following provisions of this section and to section 5(6) above, the Authority and the persons authorised by the Authority to exercise its right under this section shall also be entitled, at any time on or after the restructuring date, to exercise the right conferred by this section in relation to any underground land in relation to which there is not for the time being any person who, as a licensed operator, is authorised to carry on any coal-mining operations to which section 25 above applies.
- (3) The right conferred by this section in relation to any underground land is a right, for any of the purposes mentioned in subsection (4) below, to do any of the following, that is to say—

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- (a) to enter upon, remove, execute works in, pass through or occupy that land; or
  - (b) to do any acts requisite or convenient for the carrying on of any coal-mining operations.
- (4) The purposes mentioned in subsection (3) above are—
- (a) in relation to a licensed operator or a person authorised to act on his behalf, the carrying on of any coal-mining operations; and
  - (b) in relation to the Authority, any purposes connected with the carrying out of its functions under this Act.
- (5) Nothing in this section shall authorise—
- (a) any interference with the carrying on of any underground operations carried on otherwise than for purposes connected with any coal-mining operations;
  - (b) the withdrawal of support from any land or any interference with the surface of any land;
  - (c) the doing of any act which, apart from this section, would be actionable in England and Wales by virtue of—
    - (i) any liberty, privilege, easement, advantage or other right annexed to any other land,
    - (ii) any restrictive covenant, or
    - (iii) any statutory prohibition or restriction,
 which adversely affects the land in question;
  - (d) the doing of any act which, apart from this section, would be actionable in Scotland by virtue of—
    - (i) any real burden (including a real burden *ad factum praestandum*), or
    - (ii) any statutory prohibition or restriction,
 which adversely affects the land in question; or
  - (e) the doing of any act which, apart from this section, would be actionable as a trespass or nuisance and, if done, would be likely to cause actual damage of more than a purely nominal amount.
- (6) For the purposes of subsection (5) above the reference to a liberty, privilege, easement, advantage or other right being annexed to any land is a reference to its appertaining to that land or any part of it, to its being demised, occupied or enjoyed with that land or any part of it or to its being reputed or known as part or parcel of the land or as appurtenant to the land or to any part of it.
- (7) Nothing in this section shall confer any such right as is mentioned in section 9(1)(b) above or be taken to authorise a contravention of section 25(1) above or of any of the conditions of a licence under Part II of this Act.
- (8) The rights conferred on the Corporation by virtue of section 15 of the <sup>M38</sup>Coal Act 1938, section 8(1) of the 1946 Act and section 25 of the <sup>M39</sup>Control of Pollution Act 1974 (which made provision similar to that made by this section and extended such provision to waste disposal), or by virtue of any of those provisions, shall not be exercisable at any time on or after the restructuring date.

#### Marginal Citations

**M38** 1938 c. 52.

**M39** 1974 c. 40.



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*Changes to legislation:* There are currently no known outstanding effects for the Coal Industry Act 1994. (See end of Document for details)

### *Opencast operations*

#### **52 Opencast operations.**

- (1) The following powers under the <sup>M40</sup>Opencast Coal Act 1958 (“the 1958 Act”) shall not be exercisable at any time after 31st December 1999, that is to say—
- (a) the power to make a compulsory rights order;
  - (b) the power under section 15 of that Act to make an order suspending a right of way; and
  - (c) the power to make an order under section 16 of that Act (orders conferring rights for the purposes of drainage or water supply);
- and the Secretary of State shall not, at any time after that date, give a direction designating any land for the purposes of section 39(2) of that Act (rights of entry) except on an application made to him before that date by the Authority.
- (2) Subject to subsection (1) above and to any transfers in accordance with a restructuring scheme of any rights or liabilities under the 1958 Act, that Act shall have effect on and after the restructuring date with the amendments specified in Schedule 8 to this Act (which, as well as making other minor amendments of that Act, makes the modifications, in relation to the period before 31st December 1999, which are requisite for enabling orders under that Act to be made in favour of persons other than the Corporation).
- (3) Subsection (1) above shall be without prejudice to the effect after 31st December 1999 of anything done under the 1958 Act on or before that date or generally to the operation of that Act in relation to anything so done.

#### **Marginal Citations**

**M40** 1958 c. 69.

### *Protection of the environment*

#### **53 Environmental duties in connection with planning.**

- (1) This section applies in the case of proposals (“coal-mining proposals”) formulated for inclusion in so much of any application for planning permission as relates to any of the following, that is to say—
- (a) the carrying on of any coal-mining operations;
  - (b) the restoration of land used in connection with the carrying on of any coal-mining operations; and
  - (c) the carrying on of any other operations incidental to any coal-mining operations or to the restoration of land which has been so used.
- (2) Where a planning authority consider any coal-mining proposals included in such an application, they shall have regard—
- (a) to the desirability of the preservation of natural beauty, of the conservation of flora and fauna and geological or physiographical features of special interest and of the protection of sites, buildings, structures and objects of architectural, historic or archaeological interest; and

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- (b) to the extent (if any) to which the person by whom the proposals were formulated has complied with subsection (3) below.
- (3) A person who formulates coal-mining proposals shall be required for the purposes of paragraph (b) of subsection (2) above—
- (a) to have regard, in formulating those proposals, to the desirability of the matters mentioned in paragraph (a) of that subsection; and
- (b) to formulate proposals (as part of or in addition to the coal-mining proposals) for the adoption of such measures (if any) as it is reasonably practicable for that person to adopt for mitigating any adverse effect of the development to which the coal-mining proposals relate on the natural beauty of any area or on any such flora, fauna, features, sites, buildings, structures or objects as are so mentioned.
- (4) In this section—
- “development” and “planning permission”—
- (a) in relation to England and Wales, have the same meanings as in the <sup>M41</sup>Town and Country Planning Act 1990; and
- (b) in relation to Scotland, have the same meanings as in the <sup>M42</sup>Town and Country Planning (Scotland) Act 1972; and
- “planning authority” means—
- (a) any local planning authority within the meaning of the <sup>M43</sup>Town and Country Planning Act 1990 or any planning authority within the meaning of Part IX of the <sup>M44</sup>Local Government (Scotland) Act 1973; or
- (b) the Secretary of State in the exercise and performance of such of his powers and duties under those Acts as relate to the grant of planning permission.
- (5) Section 3 of the <sup>M45</sup>Opencast Coal Act 1958 (protection of amenity) shall cease to have effect.

**Modifications etc. (not altering text)**

C3 S. 53: transfer of functions (1.7.1999) by S.I. 1999/672, art. 2, Sch. 1

**Marginal Citations**

M41 1990 c. 8.

M42 1972 c. 52.

M43 1990 c. 8.

M44 1973 c. 65.

M45 1958 c. 69.

**54 Obligations to restore land affected by coal-mining operations.**

- (1) Subject to subsection (5) below, the power of the Secretary of State by a development order to make the planning permission granted by any such order subject to conditions shall include power, in relation to any permission to win or work any minerals in a coal mine started before 1st July 1948, to make it a condition of that permission that there is compliance with such requirements falling within subsection (2) below as may be specified or described in the order.

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- (2) The requirements which, in relation to any coal mine, fall within this section are such requirements as the Secretary of State thinks fit in relation to—
- (a) the demolition or removal of any buildings, plant, machinery, structures or erections used at any time for or in connection with any previous coal-mining operations at that mine; and
  - (b) the re-instatement, restoration and aftercare of any land used at any time for or in connection with any previous coal-mining operations at that mine.
- (3) In subsection (2) above “previous coal-mining operations”, in relation to the requirements imposed by any condition, means—
- (a) any coal-mining operations carried on by any person before 1st July 1948; or
  - (b) any coal-mining operations which—
    - (i) were carried on by any person at any time on or after that date but before the coming into force of that condition; and
    - (ii) were operations constituting development for which planning permission was granted by a development order or any corresponding order made, or having effect as if made, under any enactment then in force;
- and references in this section to the use of anything in connection with any such operations shall include references to its use for or in connection with activities carried on in association with, or for purposes connected with, the carrying on of those operations.
- (4) A condition contained in a development order by virtue of this section may provide—
- (a) for the requirements imposed by that condition to include a requirement framed by reference to the opinion or approval of the relevant planning authority; and
  - (b) for that condition to be capable of being modified by agreement with the relevant planning authority.
- (5) The Secretary of State’s powers under this section to modify a development order shall not be exercised at any time after the end of the period of six months beginning with the restructuring date, except for purposes which do not, in relation to any coal mine, include any of the following, that is to say—
- (a) imposing a requirement which had not previously been imposed in relation to that coal mine;
  - (b) making a requirement which had been imposed in relation to that coal mine more onerous; and
  - (c) making provision by reference to any person’s opinion or approval so as to confer powers that did not exist before and might be exercised for a purpose falling within paragraph (a) or (b) above;
- but nothing in this subsection shall be taken as affecting the continuing effect after the end of that period of any modification made after the passing of this Act and before the end of that period.
- (6) Expressions used in this section and in the <sup>M46</sup>Town and Country Planning Act 1990 or the <sup>M47</sup>Town and Country Planning (Scotland) Act 1972 shall—
- (a) in the application of this section to England and Wales, have the same meanings in this section as in that Act of 1990; and
  - (b) in the application of this section to Scotland, have the same meanings in this section as in that Act of 1972.

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- (7) In this section “relevant planning authority”—
- (a) in relation to England and Wales, means the mineral planning authority within the meaning of the <sup>M48</sup>Town and Country Planning Act 1990; and
  - (b) in relation to Scotland, means the planning authority within the meaning of Part IX of the <sup>M49</sup>Local Government (Scotland) Act 1973.

#### Marginal Citations

M46 1990 c. 8.

M47 1972 c. 52.

M48 1990 c. 8.

M49 1973 c. 65.

### *Health and safety regulations as to rescue service*

#### **55 Health and safety regulations as to rescue service.**

- (1) The power to make health and safety regulations shall include power, in relation to any requirement of any such regulations that a person carrying on coal-mining operations is to be a participant in a mine rescue scheme approved by the Secretary of State, to provide—
  - (a) for approval to be given to or withdrawn from any scheme only after such consultation as may be specified or described in the regulations; and
  - (b) for the approved schemes to be confined to those which appear to the Secretary of State to be such as secure that it is reasonably practicable for every licensed operator who is required to do so to participate, on reasonable terms, in an approved scheme.
- (2) In subsection (1) above the references to a mine rescue scheme are references to any scheme or other arrangements the participants in which are entitled, in an emergency, to the services of persons with the expertise and equipment required for rescuing individuals from underground.
- (3) In subsection (1) above “health and safety regulations” means regulations under section 15 of the <sup>M50</sup>Health and Safety at Work etc. Act 1974; and the preceding provisions of this section shall be without prejudice to the generality of any provisions of that Act as to the matters that may be included in any such regulations.

#### Marginal Citations

M50 1974 c. 37.

### *Registration of rights*

#### **56 Registration of rights.**

- (1) The Authority shall establish and maintain a register in which it shall enter particulars of—

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- (a) every notice under section 38 above a copy of which is sent to the Authority by the person giving it;
  - (b) every notice published under section 2 of the 1975 Act (notices conferring right for Corporation to withdraw support) a copy of which has been supplied to the Authority by the Corporation;
  - (c) every public notice under paragraph 6(2) of Schedule 2 to the <sup>M51</sup>Coal Act 1938 (withdrawal of support) a copy of which has been supplied to the Authority by the Corporation;
  - (d) every notice given by the Authority under section 41 above;
  - (e) every notice given for the purposes of section 49 above a copy of which is sent to the Authority by the person giving it;
  - (f) every notice published under section 3 of the 1975 Act (notices conferring right for the Corporation to work coal in copyhold land) a copy of which has been supplied to the Authority by the Corporation;
  - (g) every notice sent to the Authority under paragraph 9 of Schedule 7 to this Act and so much of any information known to the Authority as—
    - (i) relates to any compensation paid under section 3(4) of the 1975 Act or to any agreement for the purposes of paragraph 8 of Schedule 2 to the 1975 Act, and
    - (ii) is information which, in the case of any compensation or agreement under or for the purposes of Part I of Schedule 7 to this Act, would fall to be included in such a notice;
  - (h) the following, that is to say—
    - (i) every compulsory rights order under the <sup>M52</sup>Opencast Coal Act 1958,
    - (ii) every order under section 15 or 16 of that Act (rights of way, drainage and water supply), and
    - (iii) every designation under section 39 of that Act,in so far as it is an order or designation made by the Authority or an order or designation of which a copy has been supplied to the Authority by the Corporation;
  - (i) every confirmation of an order mentioned in paragraph (h)(i) or (ii) above and every notice or other document for the purposes of that Act of 1958 which is, or a copy of which is, sent to the Authority under that Act or a copy of which has been supplied to the Authority by the Corporation; and
  - (j) every agreement entered into with a local planning authority (within the meaning of that Act of 1958) for the purposes of section 15(5) of that Act (agreements as to the restoration of a right of way).
- (2) Where a copy of any notice under section 38 above is sent to the Authority more than fourteen days before the end of the period of three months mentioned in subsection (3) (a) of that section, the duty of the Authority, subject to subsection (3) below, to enter particulars of that notice in the register maintained under this section shall be discharged before the end of that period of three months.
- (3) The Authority shall not enter in the register maintained under this section any particulars of—
- (a) any notice under section 38 above, or
  - (b) any notice given for the purposes of section 49 above on or after the restructuring date,

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unless it is satisfied that the notice has been properly given in accordance with the requirements of this Act and, in the case of a notice under section 38 above, that the requirements of section 39(4) above have been complied with in relation to that notice.

- (4) It shall be the duty of the Authority to preserve a copy of every document particulars of which are, by virtue of subsection (1) above, for the time being entered in the register maintained under this section.
- (5) If any person furnishes the Authority with any information for the purposes of this section which he knows to be false in a material particular or recklessly furnishes the Authority with any information for those purposes which is false in a material particular, he shall be guilty of an offence and liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to a fine.
- (6) References in this section to the supply to the Authority by the Corporation of a copy of any document include references to the transfer in accordance with a restructuring scheme of possession of the document itself or of any copy of that document.

#### Marginal Citations

**M51** 1938 c. 52.

**M52** 1958 c. 69.

## PART IV

### GENERAL AND SUPPLEMENTAL

#### *Information provisions*

#### **57 Public access to information held by the Authority.**

- (1) This section applies to the information contained in any register maintained by the Authority under section 35 or 56 above and to any of the following information which is for the time being in the possession of the Authority, that is to say—
  - (a) information about the geological or physiographical features or characteristics of any land in which any unworked coal or any coal mine is situated or of any other land;
  - (b) information about the identity of the persons in whom interests and rights in or in relation to any unworked coal or any coal mine have been vested;
  - (c) the contents of the plans of any coal mines or coal workings;
  - (d) any other information about proposals for the carrying on by any person of any coal-mining operations;
  - (e) information about any subsidence or subsidence damage or about claims made under the 1991 Act; and
  - (f) information about such other matters as the Secretary of State may by regulations prescribe for the purposes of this section.
- (2) Subject to subsections (3) and (4) below, it shall be the duty of the Authority to establish and maintain arrangements under which every person is entitled, in such

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- cases, on payment to the Authority of such fee and subject to such other conditions as the Authority may consider appropriate—
- (a) to be furnished with any information to which this section applies;
  - (b) to have the contents of so much of the records maintained by the Authority as contains any information to which this section applies made available to him, at such office of the Authority as it may determine, for inspection at such times as may be reasonable; and
  - (c) to make or be supplied with copies of, or of extracts from, so much of the records maintained by the Authority as contains any information to which this section applies.
- (3) Subject to subsection (5) below, nothing in this section shall require or authorise the disclosure by the Authority of any information which—
- (a) relates to the affairs of an individual or specifically to the affairs of any body of persons (whether corporate or unincorporate), including the Authority itself, and
  - (b) is not contained in a register maintained under section 35 or 56 above, if the disclosure of that information would or might, in the opinion of the Authority, seriously and prejudicially affect the interests of that individual or, as the case may be, of that body.
- (4) Subject to subsection (5) below, nothing in this section shall require or authorise the disclosure by the Authority, without the consent of the person to whom the Authority owes the obligation of confidence, of any information which—
- (a) has been furnished to the Authority—
    - (i) in pursuance of the provisions of a licence under Part II of this Act;
    - (ii) in pursuance of any provisions of an agreement entered into in connection with, or with any proposals for, the carrying on of any activities in the course of any exploration for coal or of any activities for which a licence under section 2 of the <sup>M53</sup>Petroleum (Production) Act 1934 is required; or
    - (iii) for the purposes of any application to the Authority for the grant of a licence under Part II of this Act, for the making of such an agreement or for the transfer or creation of any interests or rights in or in relation to any land;
  - and
  - (b) under the provisions of the licence under Part II of this Act, of that agreement or of any undertaking given by the Authority to the applicant for the purposes of that application, is to be treated as subject to an obligation of confidence owed by the Authority to any other person.
- (5) The information that is to be excluded by virtue of subsections (3) and (4) above from the information which is to be made available to any person in pursuance of arrangements under this section shall not include any information of a description that appears to the Authority to comprise information relating to matters which are or may be relevant to the safety of members of the public or of any particular individual or individuals other than the person whose consent is required for its disclosure.
- (6) For the purposes of this section it shall be the duty of the Authority to maintain such records as it considers appropriate of any information which comes into its possession and is information to which this section applies.

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- (7) The power to make regulations for the purposes of this section shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (8) In this section “records” includes registers, maps, plans and accounts, as well as computer records and other records kept otherwise than in documentary form.

#### **Marginal Citations**

**M53** 1934 c. 36.

### **58 Liability for inaccurate information furnished to the Authority.**

- (1) This section applies where the conditions of a licence under Part II of this Act contain provision stating—
- (a) that information of a specified description which is furnished to the Authority in pursuance of the conditions of the licence may be disclosed by the Authority for specified purposes in pursuance of arrangements under section 57 above; and
  - (b) that any information of that description that is disclosed by the Authority for any of those purposes is to be treated, for the purposes of this section, as information whose accuracy the operator has undertaken to secure.
- (2) The licensed operator shall owe a duty to the Authority and to every person likely to be affected by any inaccuracy in information disclosed by the Authority for any of the specified purposes to exercise all due diligence to secure—
- (a) that the Authority is furnished, in accordance with the conditions of the licence, with all the information of the specified descriptions which the operator is required by those conditions to furnish to the Authority; and
  - (b) that the information of those descriptions which is furnished by the operator to the Authority is accurate in every material particular.
- (3) Where a duty is owed by any person to another person by virtue of subsection (2) above, any breach of that duty which causes that other person to sustain loss or damage shall be actionable against the person in breach at the suit or instance of the other person.
- (4) A person shall not be liable for any breach of a duty mentioned in subsection (2) above except—
- (a) in respect of a disclosure of information made by the Authority for a specified purpose; and
  - (b) to the Authority or the person to whom the disclosure was made.
- (5) This section shall be without prejudice to the liability of any person for breach of the duty to comply with an enforcement order (within the meaning of Part II of this Act).

### **59 Information to be kept confidential by the Authority.**

- (1) Subject to the following provisions of this section, it shall be the duty of the Authority to establish and maintain such arrangements as it considers best calculated to secure that information which—



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- (a) is in the Authority's possession in consequence of either the carrying out of any of its functions or the transfer to the Authority, in accordance with a restructuring scheme, of any records, and
  - (b) relates to the affairs of any individual or to any particular business, is not, during the lifetime of that individual or so long as that business continues to be carried on, disclosed to any person without the consent of that individual or, as the case may be, of the person for the time being carrying on that business.
- (2) Nothing in subsection (1) above shall authorise or require the making of arrangements which prevent the disclosure of information—
- (a) for the purpose of facilitating the carrying out by the Secretary of State, the Treasury or the Authority of any of his, their or, as the case may be, its functions under this Act;
  - (b) in pursuance of arrangements made under section 57 above;
  - (c) for the purpose of facilitating the carrying out by any relevant authority of any of the functions in relation to which it is such an authority;
  - (d) in connection with the investigation of any criminal offence or for the purposes of criminal proceedings;
  - (e) for the purposes of any civil proceedings brought under this Act or any relevant enactment, of any proceedings before the Lands Tribunal or the Lands Tribunal for Scotland under the 1991 Act or of any arbitration for which provision is made by regulations under section 47(2) above; or
  - (f) in pursuance of any Community obligation.
- (3) For the purposes of this section—
- (a) every Minister of the Crown and local weights and measures authority in Great Britain is a relevant authority in relation to his or, as the case may be, their functions under any relevant enactment;
  - (b) the Secretary of State and the Treasury are relevant authorities in relation to their functions under the <sup>M54</sup>Financial Services Act 1986 and the enactments relating to companies, insurance companies and insolvency;
  - (c) an inspector appointed under the enactments relating to companies, an official receiver and any recognised professional body for the purposes of section 391 of the <sup>M55</sup>Insolvency Act 1986 are relevant authorities in relation to their functions as such;
  - (d) every enforcing authority, within the meaning of Part I of the <sup>M56</sup>Health and Safety at Work etc. Act 1974, is a relevant authority in relation to its functions under any relevant statutory provision, within the meaning of that Act; and
  - (e) the following are relevant authorities in relation to all of their functions, that is to say—
    - (i) the Comptroller and Auditor General;
    - (ii) the Health and Safety Executive and the Health and Safety Commission;
    - (iii) the National Rivers Authority;
    - (iv) the Monopolies Commission;
    - (v) the Director General of Fair Trading and the Director General of Electricity Supply;
    - [<sup>F1</sup>(vi) the Scottish Environment Protection Agency.]

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- (4) In subsections (2) and (3) above “relevant enactment” means any of the following, that is to say—
- (a) the <sup>M57</sup>Trade Descriptions Act 1968;
  - (b) the <sup>M58</sup>Fair Trading Act 1973;
  - (c) the Consumer Credit Act 1974;
  - (d) Part II of the <sup>M59</sup>Control of Pollution Act 1974;
  - (e) the <sup>M60</sup>Restrictive Trade Practices Act 1976;
  - (f) the <sup>M61</sup>Resale Prices Act 1976;
  - (g) the <sup>M62</sup>Estate Agents Act 1979;
  - (h) the <sup>M63</sup>Competition Act 1980;
  - (i) the <sup>M64</sup>Consumer Protection Act 1987;
  - (j) the <sup>M65</sup>Electricity Act 1989;
  - (k) the <sup>M66</sup>Water Resources Act 1991;
  - (l) the <sup>M67</sup>Land Drainage Act 1991;
  - (m) any subordinate legislation made for the purpose of securing compliance with the Directive of the Council of the European Communities dated 10th September 1984 (No. 84/450/EEC) on the approximation of the laws, regulations and administrative provisions of the member States concerning misleading advertising.
- (5) Nothing in any arrangements under this section shall—
- (a) limit the matters which may be contained in a report under section 60 below or section 49 of the 1991 Act (report on operation of that Act); or
  - (b) restrict or prohibit the disclosure of any information which has already been made public—
    - (i) as part of such a report;
    - (ii) in pursuance of any arrangements under section 57 above;
    - (iii) under any provision of section 31 or 32 above or Part III of this Act requiring the publication of any notice or other matter; or
    - (iv) in the exercise of any power or the performance of any duty which is conferred or imposed on any person apart from this Act.
- (6) The Secretary of State may by order made by statutory instrument modify subsections (2) to (5) above so as to add to or restrict the descriptions of disclosures which are to be excluded from any prohibition contained in arrangements under subsection (1) above; and the power to make an order under this subsection shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) Subject to subsection (8) below, where any licence under Part II of this Act or any such undertaking as is mentioned in section 57(4)(b) above contains provision for any information furnished to the Authority to be treated as subject to such an obligation of confidence as restricts the disclosure or use of that information without the consent of the person to whom that obligation is to be owed—
- (a) the requirement to comply with that obligation shall be a duty owed by the Authority to that person; and
  - (b) any such disclosure or use, in contravention of that provision, of any information as causes the person to whom it is owed to sustain loss or damage shall be actionable against the Authority at the suit or instance of that person.

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(8) Subsection (7) above shall not apply, except in so far as the provisions of the licence or undertaking contain express provision to the contrary, to any disclosure of information which is for the time being excluded by virtue of subsections (2) to (5) above from the prohibition contained in arrangements under subsection (1) above.

(9) In this section “records” has the same meaning as in section 57 above.

#### Textual Amendments

**F1** S. 59(3)(e)(vi) substituted (1.4.1996) by S.I. 1996/973, Sch. para. 16.

#### Marginal Citations

**M54** 1986 c. 60.  
**M55** 1986 c. 45.  
**M56** 1974 c. 37.  
**M57** 1968 c. 29.  
**M58** 1973 c. 41.  
**M59** 1974 c. 40.  
**M60** 1976 c. 34.  
**M61** 1976 c. 53.  
**M62** 1979 c. 38.  
**M63** 1980 c. 21.  
**M64** 1987 c. 43.  
**M65** 1989 c. 29.  
**M66** 1991 c. 57.  
**M67** 1991 c. 59.

## 60 Annual report of the Authority.

- (1) As soon as reasonably practicable after the end of each financial year the Authority shall prepare a report on its activities during that year and shall send a copy of that report to the Secretary of State.
- (2) The Authority’s annual report—
- (a) shall set out—
    - (i) all such directions under section 6 above, this section or Part II of Schedule 1 to this Act, and
    - (ii) all such determinations under that Part of that Schedule, as have been given to it or made during the financial year to which the report relates;
  - (b) shall incorporate the statement of accounts prepared by the Authority in respect of the accounting year ending with the financial year in question, together with a copy of the report on those accounts which is required to be laid before Parliament under paragraph 15(4) of Schedule 1 to this Act; and
  - (c) shall otherwise be in such form, and contain such information, as may be specified in a direction given to it by the Secretary of State.
- (3) The information contained in the Authority’s annual report shall not include any such information as falls to be excluded by virtue of subsection (3) or (4) of section 57 above from the information which is to be made available in pursuance of arrangements under that section.

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- (4) Nothing in subsection (3) above shall prevent the inclusion in the Authority's annual report of any information which has already been made public by virtue of any provision of this Act or of any other enactment.
- (5) In consequence of section 49 of the 1991 Act (report on operation of that Act), it shall not be necessary for the Authority's annual report to include any report on the operation of that Act.
- (6) As soon as reasonably practicable after he has received the Authority's annual report for any financial year the Secretary of State shall lay a copy of it before each House of Parliament.
- (7) It shall be the duty of the Authority—
  - (a) to arrange for copies of every annual report of the Authority to be published in such manner as it considers appropriate for securing that the information contained in it is available to the persons likely to be interested in it; and
  - (b) to send the Secretary of State such number of copies of the published report as he may require.

#### **61 Report on financial assistance for coal-mining museums.**

As soon as reasonably practicable after the end of the period of three years beginning with the restructuring date, the Secretary of State shall prepare and lay before Parliament a report setting out particulars of—

- (a) the financial assistance provided during that period to coal-mining museums, so far as it has involved the making of payments for that purpose to any person by the Secretary of State;
- (b) the manner in which the provision of that financial assistance has been administered; and
- (c) the use to which that financial assistance has been put by the coal-mining museums which have received it.

#### *Supplemental*

#### **62 Financial provisions.**

There shall be paid out of money provided by Parliament—

- (a) any administrative expenses incurred by the Secretary of State or the Treasury in consequence of the provisions of this Act;
- (b) any sums required by any Minister of the Crown or Government department for meeting obligations arising in consequence of that Minister or department becoming entitled or subject, in accordance with any restructuring scheme, to any property, rights or liabilities; and
- (c) any increase attributable to this Act in the sums payable out of money so provided under any other Act.

#### **63 Provisions relating to the service of documents.**

- (1) Any document required or authorised by virtue of this Act to be served on any person may be served—

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- (a) by delivering it to him or by leaving it at his proper address or by sending it by post to him at that address;
- (b) if the person is a body corporate, by serving it in accordance with paragraph (a) above on the secretary or clerk of that body; or
- (c) if the person is a partnership, by serving it in accordance with paragraph (a) above on a partner or a person having the control or management of the partnership business;

and any document required or authorised by this Act to be served on the Authority or the Corporation may be served by leaving it at, or sending it by post to, any office of the Authority or, as the case may be, of the Corporation.

- (2) For the purposes of this section and section 7 of the <sup>M68</sup>Interpretation Act 1978 (which relates to the service of documents by post) in its application to this section, the proper address of any person on whom a document is to be served shall be his last known address, except that—
  - (a) in the case of service on a body corporate or its secretary or clerk, it shall be the address of the registered or principal office of the body; and
  - (b) in the case of service on a partnership or a partner or a person having the control or management of a partnership business, it shall be the address of the principal office of the partnership;

and for the purposes of this subsection the principal office of a company registered outside the United Kingdom, or of a partnership carrying on business outside the United Kingdom, is its principal office within the United Kingdom.

- (3) If a person to be served by virtue of this Act with any document by another has specified to that other an address within the United Kingdom, other than his proper address (as determined in accordance with subsection (2) above), as one at which he or someone on his behalf will accept documents of the same description as that document, that address shall also be treated as a proper address of that person for the purposes of this section and for the purposes of the said section 7 in its application to this section.
- (4) References in this section to the service of a document on any person include references to the giving, making or sending to that person of any notice, direction, claim or request which is in writing.
- (5) This section shall not apply to any document in relation to the service of which provision is made by rules of court.

**Modifications etc. (not altering text)**

C4 S. 63 applied (31.10.1994) by 1994 c. 45, s. 51 (as substituted (31.10.1994) by 1994 c. 21, s. 67, Sch. 9 para. 41(3)).

**Marginal Citations**

M68 1978 c. 30.

**64 Offences by bodies corporate etc.**

- (1) Where a body corporate is guilty of an offence under this Act and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, then he,

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as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

- (2) Where the affairs of a body corporate are managed by its members, subsection (1) above shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.
- (3) Where any partnership in Scotland or any unincorporated association in Scotland which is not a partnership is guilty of an offence under this Act and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—
- (a) any partner in the partnership or, as the case may be, any person concerned in the management or control of the association, or
  - (b) any person purporting to act in any such capacity,
- then he, as well as the partnership or association, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

## 65 Interpretation.

- (1) In this Act, except in so far as the context otherwise requires—
- “the 1946 Act” means the <sup>M69</sup>Coal Industry Nationalisation Act 1946;
  - “the 1975 Act” means the <sup>M70</sup>Coal Industry Act 1975;
  - “the 1991 Act” means the <sup>M71</sup>Coal Mining Subsidence Act 1991;
  - “the Authority” means the Coal Authority;
  - “business” includes any trade or profession;
  - “coal” means bituminous coal, cannel coal and anthracite;
  - “coal mine” includes—
    - (a) any space excavated underground for the purposes of coal-mining operations and any shaft or adit made for those purposes,
    - (b) any space occupied by unworked coal, and
    - (c) a coal quarry and opencast workings of coal;
  - “coal-mining operations” includes—
    - (a) searching for coal and boring for it,
    - (b) winning, working and getting it (whether underground or in the course of opencast operations),
    - (c) bringing underground coal to the surface, treating coal and rendering it saleable,
    - (d) treating coal in the strata for the purpose of winning any product of coal and winning, working or getting any product of coal resulting from such treatment, and
    - (e) depositing spoil from any activities carried on in the course of any coal-mining operations and draining coal mines,
- and an operation carried on in relation to minerals other than coal is a coal-mining operation in so far as it is carried on in relation to those minerals as part of, or is ancillary to, operations carried on in relation to coal;
- “company” has the same meaning as in the <sup>M72</sup>Companies Act 1985;
  - “contravention” includes a failure to comply, and cognate expressions shall be construed accordingly;

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“the Corporation” means the British Coal Corporation or, in relation to times before the commencement of section 1 of the<sup>M73</sup>Coal Industry Act 1987, the National Coal Board;

“debenture” includes debenture stock;

“the dissolution date” means the date appointed under section 23 above for the dissolution of the Corporation;

“financial year” means the twelve months ending with 31st March;

“holder”, in relation to a licence under Part II of this Act, means the following person (whether or not the authorisation contained in the licence remains in force), that is to say—

- (a) in a case where there has been no such transfer in relation to that licence as is mentioned in section 27(5) above, the person to whom the licence was granted, and
- (b) in any other case, the person to whom the rights and obligations of the holder of that licence were last transferred;

“interest”, in relation to land, includes estate;

“liability”, in relation to the transfer of liabilities from one person to another or to the modification of any liability, does not include any criminal liability;

“licensed operator” means any person who is for the time being either—

- (a) authorised by a licence under Part II of this Act to carry on coal-mining operations to which section 25 above applies, or
- (b) authorised by virtue of subsection (3) of that section to carry on any such operations;

“modifications” includes additions, alterations and omissions, and cognate expressions shall be construed accordingly;

“the restructuring date” means the date appointed as that date under section 7(1) above;

“restructuring scheme” means a scheme under section 12 above;

“securities”, in relation to a company, includes shares, debentures, bonds and other securities of the company, whether or not constituting a charge on the assets of the company;

“shares” includes stock;

“subordinate legislation” has the same meaning as in the<sup>M74</sup>Interpretation Act 1978;

“subsidence damage” has the same meaning as in the 1991 Act;

“subsidiary” and “wholly-owned subsidiary” have the meanings given by section 736 of the<sup>M75</sup>Companies Act 1985;

“successor company” means any company which, at a time when it is wholly owned by the Crown, becomes entitled or subject, in accordance with any restructuring scheme, to any property, rights or liabilities;

“undertaking”, in relation to the Corporation, includes the undertakings of its wholly-owned subsidiaries.

- (2) References in this Act to the treatment of coal in the strata shall be taken not to include references to any operations which—
  - (a) are carried on in relation to coal in or to which any oil or gas that exists in its natural condition in the strata is absorbed or adsorbed; and
  - (b) are so carried on wholly for the purpose of winning or getting that oil or gas;

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and in this subsection “oil or gas” means oil or gas within the meaning of section 9 above.

- (3) References in this Act to the creation, in favour of any person, of an interest in property include references to the vesting in that person of a freehold or leasehold interest in property.
- (4) For the purposes of this Act a company shall be regarded as wholly owned by the Crown at any time if it is—
  - (a) a company limited by shares in which there are at that time no issued shares held otherwise than by, or by a nominee of, the Treasury, the Secretary of State or any other company wholly owned by the Crown; or
  - (b) a company limited by guarantee of which no person other than the Treasury or the Secretary of State, or a nominee of the Treasury or the Secretary of State, is a member.

#### Marginal Citations

- M69 1946 c. 59.  
M70 1975 c. 56.  
M71 1991 c. 45.  
M72 1985 c. 6.  
M73 1987 c. 3.  
M74 1978 c. 30.  
M75 1985 c. 6.

## 66 Crown application.

- (1) This Act shall have effect in relation to any land or other property in which there is a Crown or Duchy interest as it has effect in relation to land or other property in which there is no such interest.
- (2) So much of this Act as contains provision for the modification of the rights or liabilities to which any person is or may become entitled or subject shall bind the Crown.
- (3) Nothing in this section shall be taken as requiring a licence under Part II of this Act for the carrying on by or on behalf of the Crown of any coal-mining operations.
- (4) Where this Act modifies any enactment in relation to which provision is made for its application to the Crown that differs from the provision made by this section, that provision, and not this section, shall have effect in relation to the modification.
- (5) In this section “Crown or Duchy interest” means any interest belonging to Her Majesty or to the Duchy of Cornwall or any interest belonging to a Government department or held in trust for the purposes of a Government department.

## 67 Amendments, transitional provisions, savings and repeals.

- (1) The enactments mentioned in Schedule 9 to this Act shall have effect subject to the amendments there specified (being minor amendments or amendments consequential on the preceding provisions of this Act).



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- (2) The Secretary of State may by order made by statutory instrument make such consequential modifications of any provision contained in any Act passed before the relevant commencement date, or in any subordinate legislation made before that date, as appear to him necessary or expedient—
- (a) in respect of any reference in that Act or subordinate legislation to the Corporation;
  - (b) in respect of any reference (in whatever terms) in that Act or subordinate legislation to a person carrying on coal-mining operations or to such operations;
  - (c) in respect of any reference in that Act or subordinate legislation to any enactment repealed or amended by this Act; or
  - (d) in the case of a provision contained in subordinate legislation, in respect of any other inconsistency between that subordinate legislation and this Act;
- and in this subsection “the relevant commencement date”, in relation to any modifications, means the date of the coming into force of the provisions of this Act on which they are consequential.
- (3) If it appears to the Secretary of State to be appropriate to do so—
- (a) for the purposes of, or in consequence of, the coming into force of any enactment contained in this Act, or
  - (b) in consequence of the effect or operation at any time after the restructuring date of any such enactment or of anything done under any such enactment,
- he may by order made by statutory instrument repeal, amend or re-enact (with or without modifications) any provision contained in any local Act (whenever passed), including, in the case of an order by virtue of paragraph (b) above, a provision amended by virtue of subsection (2) or paragraph (a) above.
- (4) The power of the Secretary of State to make provision by an order under subsection (3) above shall include power—
- (a) to provide for general modifications of local Acts of a specified description and for modifications making different provision for different cases;
  - (b) to make such supplemental, incidental, consequential and transitional provision as the Secretary of State considers appropriate in relation to any other provisions of such an order; and
  - (c) in the case of an order made after the restructuring date, to require provision contained in the order to be treated as if it came into force on that date.
- (5) An order shall not be made under this section for modifying any public general Act unless a draft of the order has been laid before, and approved by a resolution of, each House of Parliament.
- (6) A statutory instrument containing an order under this section a draft of which is not required to have been laid before Parliament under subsection (5) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) The transitional provisions and savings contained in Schedule 10 to this Act shall have effect; and those provisions and savings shall be without prejudice to sections 16 and 17 of the <sup>M76</sup>Interpretation Act 1978 (effect of repeals).
- (8) The enactments mentioned in Schedule 11 to this Act (which include some enactments which are spent) are hereby repealed to the extent specified in the third column of that Schedule.

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#### Commencement Information

- I3** S. 67(2)-(6) in force and s. 67(8) in force for specified purposes at Royal Assent, see s. 68(6)(e)
- I4** S. 67(7) in force and 67(1)(8) in force for specified purposes at 31.10.1994 by [S.I. 1994/2552, art. 2, Sch. 1](#), Appendix (with art. 4)
- I5** S. 67(1)(8) in force for specified purposes at 1.11.1994 by [S.I. 1994/2552, art. 3, Sch. 2](#), Appendix
- I6** S. 67(1)(8) in force for specified purposes at 31.10.1994 ("the restructuring date"), see ss. 7, 68(2) and [S.I. 1994/2553, art. 2](#)
- I7** S. 67(8) in force for specified purposes at 24.12.1994 by [S.I. 1994/3063, art. 2, Sch.](#)
- I8** S. 67(8) in force for specified purposes at 1.3.1995 by [S.I. 1995/273, art. 2, Sch.](#)

#### Marginal Citations

**M76** 1978 c. 30.

### 68 Short title, commencement and extent.

- (1) This Act may be cited as the Coal Industry Act 1994.
- (2) The following provisions of this Act shall come into force on the restructuring date, that is to say—
- (a) sections 10, 11, 18 and 23;
  - (b) sections 31 to 34 and section 36;
  - (c) sections 38 to 44 and 48 to 53, section 55 and Schedules 6, 7 and 8;
  - (d) Schedule 9, except (subject to the power to appoint the restructuring date under subsection (4) below) for so much of that Schedule as relates to—
    - (i) the <sup>M77</sup>Public Health Act 1961,
    - (ii) the <sup>M78</sup>Licensing Act 1964,
    - (iii) sections 14(5) and 15(5) of the <sup>M79</sup>Land Commission Act 1967,
    - (iv) the <sup>M80</sup>Gaming Act 1968,
    - (v) sections 251(3)(b) and 259 of the <sup>M81</sup>Town and Country Planning (Scotland) Act 1972,
    - (vi) the <sup>M82</sup>Overseas Development and Co-operation Act 1980,
    - (vii) the <sup>M83</sup>National Audit Act 1983,
    - (viii) the <sup>M84</sup>Road Traffic Regulation Act 1984,
    - (ix) sections 315(4)(b) and 317 of the <sup>M85</sup>Town and Country Planning Act 1990, and
    - (x) the <sup>M86</sup>Leasehold Reform, Housing and Urban Development Act 1993;
  - (e) Part II of Schedule 11; and
  - (f) subsections (1) and (8) of section 67 so far as they relate to provisions coming into force on that date by virtue of paragraphs (d) and (e) above.
- (3) The following provisions of this Act shall come into force on the dissolution date, that is to say—
- (a) Schedule 9, so far as it relates to—
    - (i) the <sup>M87</sup>Public Health Act 1961,
    - (ii) the <sup>M88</sup>Overseas Development and Co-operation Act 1980,
    - (iii) the <sup>M89</sup>National Audit Act 1983,
    - (iv) the <sup>M90</sup>Road Traffic Regulation Act 1984, and

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- (v) the <sup>M91</sup>Leasehold Reform, Housing and Urban Development Act 1993;
  - (b) Part IV of Schedule 11; and
  - (c) subsections (1) and (8) of section 67 so far as they relate to provisions coming into force on that date by virtue of paragraphs (a) and (b) above.
- (4) Apart from the provisions to which subsections (2) and (3) above apply and the provisions specified in subsection (6) below (which come into force on the passing of this Act), this Act shall come into force on such day as the Secretary of State may by order made by statutory instrument appoint.
- (5) An order under subsection (4) above may—
- (a) appoint different days for different provisions and for different purposes; and
  - (b) make any such transitional provision (including provision modifying for transitional purposes any of the provisions of this Act or of any enactment amended or repealed by this Act) as the Secretary of State considers appropriate in connection with the bringing into force of any provision of this Act;
- but, where an order under that subsection makes any such provision as is mentioned in paragraph (b) above, the statutory instrument containing the order shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) The provisions of this Act mentioned in subsection (4) above are this section and—
- (a) sections 7 to 9;
  - (b) sections 12 to 14 and 17 and Schedule 2;
  - (c) section 54;
  - (d) sections 62 to 66;
  - (e) section 67(2) to (6); and
  - (f) Part I of Schedule 11 to this Act and subsection (8) of section 67 so far as it relates to that Part of that Schedule.
- (7) The following provisions of this Act do not extend to Scotland, that is to say—
- (a) sections 49 and 50 and Schedule 7; and
  - (b) so much of Schedules 9 and 11 as relates to enactments extending to England and Wales only.
- (8) This Act, except for—
- (a) sections 7 to 9, 12 and 13 and Schedule 2,
  - (b) sections 20 and 21 and Schedule 4,
  - (c) so much of Schedule 1 as amends the <sup>M92</sup>Parliamentary Commissioner Act 1967, the <sup>M93</sup>House of Commons Disqualification Act 1975 and the <sup>M94</sup>Northern Ireland Assembly Disqualification Act 1975,
  - (d) so much of Schedule 9 as amends any enactment that extends to Northern Ireland,
  - (e) the repeal, by virtue of their inclusion in Schedule 11, of—
    - (i) the entries relating to the Corporation in the <sup>M95</sup>Statutory Corporations (Financial Provisions) Act 1975, the <sup>M96</sup>House of Commons Disqualification Act 1975, the <sup>M97</sup>Northern Ireland Assembly Disqualification Act 1975 and the <sup>M98</sup>National Audit Act 1983,
    - (ii) the <sup>M99</sup>Coal Consumers' Councils (Northern Irish Interests) Act 1962,

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- (iii) section 2(4) and (5) of the <sup>M100</sup>Overseas Development and Co-operation Act 1980 and the entry relating to the Corporation in Schedule 1 to that Act,
  - (iv) section 1(2) of the <sup>M101</sup>Continental Shelf Act 1964 and section 2(3) of the <sup>M102</sup>Territorial Sea Act 1987,
  - (v) so much of the <sup>M103</sup>Coal Industry Act 1987 as extends to Northern Ireland, and
  - (vi) the <sup>M104</sup>British Coal and British Rail (Transfer Proposals) Act 1993, and
- (f) so much of this Part as is required for the purpose of giving effect to the extension to Northern Ireland of the provisions mentioned in the preceding paragraphs,
- does not extend to Northern Ireland.
- (9) This Act extends to the Isle of Man for the purpose of giving effect there to the repeal by this Act of subsection (3) of section 2 of the Territorial Sea Act 1987, to paragraph 10 of Schedule 10 and to so much of any restructuring scheme or any agreement under section 13 above as relates to rights mentioned in that paragraph; and, subject to that paragraph, that repeal shall accordingly include the repeal of that subsection as it extends to the Isle of Man by virtue of the <sup>M105</sup>Territorial Sea Act 1987 (Isle of Man) Order 1991.

#### Subordinate Legislation Made

- P3** S. 68(2): 31.10.1994 appointed as the restructuring date, see s. 7 and [S.I. 1994/2553, art. 2](#)
- P4** S. 68(4)(5) power partly exercised: 19.9.1994 appointed for specified provisions by [S.I. 1994/2189, art. 2, Sch.](#)
- P5** S. 68(4)(5) power partly exercised: 31.10.1994 and 1.11.1994 appointed for specified provisions and purposes by [S.I. 1994/2552, arts. 2, 3, Schs. 1, 2](#) and Appendices (with art. 4)
- P6** S. 68(4)(5) power partly exercised: 24.12.1994 appointed for specified provisions and purposes by [S.I. 1994/3063, art. 2, Sch.](#)
- P7** S. 68(4): power partly exercised: 31.1.1995 appointed for s. 24 by [S.I. 1995/159, art. 2](#)
- P8** S. 68(4)(5) power partly exercised: 1.3.1995 appointed for specified provisions and purposes by [S.I. 1995/273, art. 2, Sch.](#)

#### Marginal Citations

- M77** 1961 c. 64.  
**M78** 1964 c. 26.  
**M79** 1967 c. 1.  
**M80** 1968 c. 65.  
**M81** 1972 c. 52.  
**M82** 1980 c. 63.  
**M83** 1983 c. 44.  
**M84** 1984 c. 27.  
**M85** 1990 c. 8.  
**M86** 1993 c. 28.  
**M87** 1961 c. 64.  
**M88** 1980 c. 63.  
**M89** 1983 c. 44.  
**M90** 1984 c. 27.  
**M91** 1993 c. 28.

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- M92** 1967 c. 13.
- M93** 1975 c. 24
- M94** 1975 c. 25.
- M95** 1975 c. 55.
- M96** 1975 c. 24.
- M97** 1975 c. 25.
- M98** 1983 c. 44.
- M99** 1962 c. 22.
- M100** 1980 c. 63.
- M101** 1964 c. 29.
- M102** 1987 c. 49.
- M103** 1987 c. 3.
- M104** 1993 c. 2.
- M105** S.I. 1991/1722.

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## SCHEDULES

### SCHEDULE 1

Section 1.

#### THE COAL AUTHORITY

#### PART I

#### ORGANISATION AND PROCEEDINGS

##### *Membership*

- 1 (1) Subject to the following provisions of this paragraph, a member of the Authority shall hold and vacate office in accordance with the terms of his appointment.
- (2) Any appointment of a person as a member of the Authority shall be for a term not exceeding five years, but a person who ceases to be such a member at the end of any such term shall be eligible for re-appointment.
- (3) A member of the Authority may at any time by notice to the Secretary of State resign his office.
- (4) The Secretary of State may remove a member of the Authority if he is satisfied—
- (a) that that member has been absent from meetings of the Authority for a period of more than three consecutive months without the permission of the Authority;
  - (b) that that member has been adjudged bankrupt, that his estate has been sequestrated or that he has made a composition or arrangement with, or granted a trust deed for, his creditors; or
  - (c) that that member is unable or unfit to carry out the functions of a member.

##### *Remuneration, pensions etc.*

- 2 (1) The Authority shall pay to its members such remuneration, and such travelling and other allowances, as may be determined by the Secretary of State.
- (2) The Authority shall, if so required by the Secretary of State, pay—
- (a) such pension, allowances or gratuities to or in respect of a person who has been or is a member of the Authority, or
  - (b) such payments towards provision for the payment of a pension, allowances or gratuities to or in respect of such a person,
- as may be determined by the Secretary of State.
- (3) If, when any member of the Authority ceases to hold office, the Secretary of State determines that there are special circumstances which make it right that that member should receive compensation, the Authority shall pay to him a sum by way of compensation of such amount as may be so determined.

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- (4) The approval of the Treasury shall be required for the making of a determination under this paragraph.

#### *Staff*

- 3 (1) The Authority may, with the approval of the Secretary of State as to terms and conditions of service, appoint such officers and employees as it may determine.
- (2) No member of the Authority or other person shall be appointed by the Authority to act as its chief executive unless the Secretary of State has consented to the appointment of that person.
- (3) The Authority may—
- (a) pay such pensions, allowances or gratuities to or in respect of any persons who have been or are its officers or employees as it may, with the approval of the Secretary of State, determine;
  - (b) make such payments as it may so determine towards provision for the payment of pensions, allowances or gratuities to or in respect of any such persons; and
  - (c) provide and maintain such schemes as it may so determine (whether contributory or not) for the payment of pensions, allowances or gratuities to or in respect of any such persons.
- (4) Any reference in sub-paragraph (3) above to pensions, allowances or gratuities to or in respect of any such persons as are mentioned in that sub-paragraph includes a reference to pensions, allowances or gratuities by way of compensation to or in respect of any of the Authority's officers or employees who suffer loss of office or employment or loss or diminution of emoluments.
- (5) If any person—
- (a) on ceasing to hold any office or employment with the Authority, becomes or continues to be one of its members, and
  - (b) was, by reference to his office or employment with the Authority, a participant in a pension scheme maintained by the Authority for the benefit of any of its officers or employees,
- the Authority may, with the approval of the Secretary of State, make provision for him to continue to participate in that scheme, on such terms and conditions as it may with the consent of the Secretary of State determine, as if his service as a member were service as an officer or employee of the Authority; and any such provision shall be without prejudice to paragraph 2 above.
- (6) In addition, service as an officer or employee of the Authority shall be included in the kinds of employment to which a scheme under section 1 of the <sup>M106</sup>Superannuation Act 1972 can apply; and, accordingly, in Schedule 1 to that Act (which lists the kinds of employment to which a scheme can apply), the following entry shall be inserted at the appropriate place in the list of "Other Bodies", that is to say— "Coal Authority."
- (7) The Authority shall pay to the Treasury, at such times as the Treasury may direct, such sums as the Treasury may determine in respect of the increase attributable to sub-paragraph (6) above in the sums payable out of money provided by Parliament under the Superannuation Act 1972.

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- (8) Where any person is both a member of the Authority and a participant by reference to his service as an officer or employee of the Authority in a scheme under section 1 of the Superannuation Act 1972, the Treasury may determine that his service as such a member (including service before he became an officer or employee) shall be treated for the purposes of the scheme as service as an employee of the Authority; and any such determination shall be without prejudice to paragraph 2 above.
- (9) The consent of the Treasury shall be required for the giving of an approval under this paragraph.

#### **Marginal Citations**

**M106** 1972 c. 11.

#### *Proceedings of Authority*

- 4 Subject to the following provisions of this Schedule, the Authority may regulate its own procedure (including quorum).

#### *Delegation of powers*

- 5 Anything authorised or required by or under any enactment to be done by the Authority may be done by any member, officer or employee of the Authority who has been authorised for the purpose, whether generally or specially, by the Authority.

#### *Interests of members*

- 6 (1) A member of the Authority who is in any way directly or indirectly interested in any matter that is brought up for consideration at a meeting of the Authority shall disclose the nature of his interest to the meeting.
- (2) Where such a disclosure is made, the disclosure shall be recorded in the minutes of the meeting and the member shall not take any part in any deliberation or decision of the Authority with respect to that matter if either—
- (a) it relates to any application made to the Authority or to any licence or contract which the Authority has granted or entered into or is considering granting or entering into; or
  - (b) the Authority determines that the nature of the matter, the extent of the member's interest and any prejudicial effect of his joining in the consideration of that matter are such that the member should not take part.
- (3) For the purposes of sub-paragraph (1) above, a general notification given at a meeting of the Authority by any of its members to the effect that—
- (a) he is a member of a specified body corporate or firm, and
  - (b) he is to be regarded as interested in any matter involving that body or firm which falls to be considered after the giving of the notification,
- shall be regarded as a sufficient disclosure of his interest in relation to any such matter.
- (4) A member of the Authority who is required under this paragraph to make a disclosure at any meeting need not attend in person at the meeting in order to make the disclosure



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if he takes reasonable steps to secure that the disclosure is made by a notice which is taken into consideration and read at the meeting.

#### *Vacancies and defective appointments*

- 7 The validity of any proceedings of the Authority shall not be affected by a vacancy amongst its members, by any defect in the appointment of a member or by any contravention of the requirements of paragraph 6 above.

#### *Minutes*

- 8 (1) Minutes shall be kept of proceedings of the Authority.
- (2) Minutes of any such proceedings shall be evidence of those proceedings if they are signed by a person purporting to have acted as chairman of the proceedings to which the minutes relate or of any subsequent proceedings in the course of which the minutes were approved as a correct record.
- (3) Where minutes of any such proceedings have been signed as mentioned in subparagraph (2) above, those proceedings shall, unless the contrary is shown, be deemed to have been regularly convened and constituted.

#### *Application of seal and proof of instruments*

- 9 (1) The application of the seal of the Authority shall be authenticated by the signature of any member, officer or employee of the Authority who has been authorised for the purpose, whether generally or specially, by the Authority.
- (2) Every document purporting to be an instrument made or issued by or on behalf of the Authority and to be duly executed under the seal of the Authority, or to be signed or executed by a person authorised by the Authority for the purpose, shall be received in evidence and be treated, without further proof, as being so made or issued unless the contrary is shown.
- (3) In this paragraph the reference to the signature of a person includes a reference to a facsimile of a signature by whatever process reproduced; and “signed” shall be construed accordingly.

#### *The Parliamentary Commissioner*

- 10 In the <sup>M107</sup>Parliamentary Commissioner Act 1967, in Schedule 2 (departments and authorities subject to investigation), there shall be inserted (at the appropriate place) the following entry—
- “ Coal Authority. ”

#### **Marginal Citations**

**M107** 1967 c. 13.

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*Parliamentary disqualification etc.*

- 11 In the <sup>M108</sup>House of Commons Disqualification Act 1975, in Part II of Schedule 1 (bodies of which all the members are disqualified), there shall be inserted (at the appropriate place) the following entry—
- “ The Coal Authority. ”;
- and the like insertion shall be made in Part II of Schedule 1 to the <sup>M109</sup>Northern Ireland Assembly Disqualification Act 1975.

**Marginal Citations**

**M108** 1975 c. 24.

**M109** 1975 c. 25.

*Interpretation*

- 12 In this Part of this Schedule, “member”, in relation to the Authority, includes its chairman and deputy chairman.

**PART II**

FINANCIAL PROVISIONS

*Financial duties*

- 13 (1) The Secretary of State may, after consultation with the Authority, determine the financial duties of the Authority, and different determinations may be made for different functions and activities of the Authority.
- (2) A determination under this paragraph may—
- (a) relate to a period beginning before the date on which it is made;
  - (b) contain supplemental provisions; and
  - (c) be varied by a subsequent determination.
- (3) The Secretary of State shall give the Authority written notice of every determination made under this paragraph and it shall be the duty of the Authority to conduct its finances in accordance with the determinations of which it has been given notice.
- (4) The approval of the Treasury shall be required for the making of a determination under this paragraph.

*Finances of the Authority*

- 14 (1) The Secretary of State shall, in respect of each accounting year, pay to the Authority such amount as he may determine to be the amount required by the Authority for the carrying out during that year of its functions under this Act.
- (2) Except so far as the Secretary of State may otherwise direct, sums received by the Authority in the course of carrying out its functions shall be paid by the Authority to the Secretary of State.

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- (3) Any sums required by the Secretary of State for making a payment under sub-paragraph (1) above shall be paid out of money provided by Parliament; and any sums received by the Secretary of State under sub-paragraph (2) above shall be paid into the Consolidated Fund.
- (4) The approval of the Treasury shall be required for the making of a determination, or the giving of any direction, under this paragraph.
- (5) In this paragraph and paragraph 15 below “accounting year” means the period beginning with the day on which the Authority is established and ending with the financial year current on that date, and each successive financial year.

#### *Accounts*

- 15 (1) The Authority—
- (a) shall keep proper accounts and records in relation to its accounts; and
  - (b) in respect of each accounting year, shall prepare a statement of accounts in such form, and within such period after the end of that year, as the Secretary of State may, with the approval of the Treasury, direct.
- (2) Before such date after the end of every accounting year as the Secretary of State may direct, the Authority shall send to the Secretary of State a copy of the statement of accounts prepared in respect of that accounting year under sub-paragraph (1)(b) above.
- (3) On or before 31st August following the end of every accounting year, the Secretary of State shall send a copy of the statement of accounts prepared in respect of that year to the Comptroller and Auditor General.
- (4) The Comptroller and Auditor General shall examine, certify and report on every statement of accounts sent to him under sub-paragraph (3) above and shall lay copies of the statement and of his report before each House of Parliament.

## SCHEDULE 2

Section 12.

### RESTRUCTURING SCHEMES

#### *Contents and effect of scheme*

- 1 (1) This paragraph shall have effect as regards the manner in which effect is to be given to—
- (a) the creation in accordance with a restructuring scheme of any interests or rights in or in relation to property; and
  - (b) the transfer in accordance with such a scheme of any property, rights or liabilities.
- (2) Provisions of a restructuring scheme for the creation, by virtue of section 12(1) of this Act or paragraph 2 below, of any interest or right in or in relation to any property shall specify—
- (a) the property in question and the interest or right to be created;
  - (b) the person in whose favour it is to be created; and

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- (c) the terms and conditions subject to which it is created;  
and this Act shall have effect so as, without further assurance, to create the specified interests and rights as from the beginning of the restructuring date or, in the case of interests or rights created by virtue of paragraph 2 below, as from such date as may be appointed by the scheme in relation to the interest or right in question.
- (3) Provisions of a restructuring scheme for the transfer of property, rights or liabilities to any person shall—
- (a) specify or describe the property, rights and liabilities to be transferred;
  - (b) allocate the property, rights or liabilities to the person to whom the transfer is to be made; and
  - (c) appoint the day on which each of the transfers for which the scheme provides is to come into force;
- and such a scheme may allocate different property, rights or liabilities to different persons and may appoint different days for the scheme to come into force in relation to different transfers and different persons.
- (4) This Act shall have effect, in relation to any provisions of a restructuring scheme for the transfer of any property, rights or liabilities, so as to transfer the property, rights or liabilities, at the beginning of the day appointed for the coming into force of the transfer and without further assurance, from the Corporation or, as the case may be, its wholly-owned subsidiary to the person to whom they are allocated under the scheme; and the provisions of that scheme in relation to that transfer shall have effect from that time accordingly.
- (5) The preceding provisions of this paragraph shall have effect subject to so much of any restructuring scheme as provides for—
- (a) the creation of any of the interests or rights to be created in accordance with the scheme, or
  - (b) the transfer of any of the property, rights or liabilities to be transferred in accordance with the scheme,
- to be effected by or under any agreement or instrument entered into or executed in pursuance of an obligation imposed by virtue of paragraph 2(1)(g) below.
- (6) The same restructuring scheme may contain provision made by virtue of subsection (1) of section 12 of this Act and provision made by virtue of subsection (2) of that section.
- (7) Any matter which under this paragraph is to be included in a restructuring scheme, as well as any other matter for which provision may be made by such a scheme, may be included in the scheme wholly or partly by means of—
- (a) a description framed by reference to the part of the Corporation’s undertaking which in accordance with the scheme is to be transferred to any person; or
  - (b) the application of any provision or description contained, in relation to that matter, in any agreement under section 13 of this Act.
- (8) In their application to Scotland, sub-paragraphs (2) and (4) above shall have effect, respectively, with the omission of the words “without further assurance” and with the omission of the words “and without further assurance”.

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### *Division of property by scheme*

- 2 (1) For the purpose of making any such division as the Secretary of State considers appropriate of any of the property, rights and liabilities to which the Corporation and its wholly-owned subsidiaries are at any time entitled or subject between any two or more different persons (including, in so far as he thinks fit, any division between the Corporation or any such subsidiary and one or more other persons) a restructuring scheme may contain provision—
- (a) for the creation, in favour of the Corporation or any of its wholly-owned subsidiaries, of an interest or right in or in relation to property transferred in accordance with that scheme to any person;
  - (b) for the creation, in favour of a person to whom any transfer is made, of an interest or right in or in relation to property so transferred to another;
  - (c) for giving effect to a transfer to any person by the creation, in favour of that person, of an interest or right in or in relation to property retained by the Corporation or any of its wholly-owned subsidiaries;
  - (d) for rights and liabilities to be transferred so as to be enforceable by or against more than one transferee or by or against both one or more transferees and the Corporation or any of its wholly-owned subsidiaries;
  - (e) for rights and liabilities enforceable by or against more than one person in accordance with any provision falling within paragraph (d) above to be enforceable in different or modified respects by or against each or any of them;
  - (f) for the creation of new rights and liabilities as between different transferees and as between transferees and persons who, in pursuance of the division, continue to be entitled or subject to any property, rights or liabilities; and
  - (g) without prejudice to paragraph (f) above, for imposing on any transferee, the Corporation or any of its wholly-owned subsidiaries an obligation—
    - (i) to enter into such written agreements with any other person on whom any corresponding obligation is, could be or has been imposed by virtue of this paragraph (whether in the same or a different scheme),  
or
    - (ii) to execute such instruments in favour of any such person,  
as may be specified or described in the scheme.
- (2) A restructuring scheme may contain such supplemental and incidental provision with respect to the interests, rights and liabilities of third parties in relation to anything to which the scheme relates as the Secretary of State considers to be necessary or expedient for the purposes of any such division as is mentioned in sub-paragraph (1) above, or in connection with anything contained in the scheme by virtue of that sub-paragraph.
- (3) The provision that may be contained in a restructuring scheme by virtue of sub-paragraph (2) above shall include provision for interests, rights or liabilities to which any third party is entitled or subject in relation to anything to which the scheme relates to be modified in such respects or in such manner as may be specified in or determined under the scheme.
- (4) An obligation imposed on any person by virtue of sub-paragraph (1)(g) above shall be enforceable by the bringing, by any person with or in favour of whom the agreement or instrument is to be entered into or executed, of civil proceedings for an injunction or for interdict or for other appropriate relief.

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- (5) In this paragraph—
- (a) references, in relation to a restructuring scheme, to a transferee include references to any person in whose favour any interest or right is created in accordance with the scheme; and
  - (b) the reference, in relation to such a scheme, to a third party is a reference to any person who (apart from any provision made by virtue of sub-paragraph (1)(e) or (2) above) is neither a transferee nor a person from whom any transfer is to be made in accordance with the scheme.
- (6) Sub-paragraphs (2) and (3) above shall be without prejudice to the generality of paragraph 4(1) below.

*Property to which a scheme may relate*

- 3 (1) The property, rights and liabilities that shall be capable of being transferred in accordance with a restructuring scheme shall include—
- (a) property, rights and liabilities that would not otherwise be capable of being transferred or assigned by the Corporation or, as the case may be, its wholly-owned subsidiary;
  - (b) property acquired at a time after the making of the scheme and before the transfer comes into force, and rights and liabilities which arise or may arise in respect of anything occurring after the making of the scheme;
  - (c) property, rights and liabilities in relation to anything with respect to which provision has been made by a previous restructuring scheme;
  - (d) property situated anywhere in the United Kingdom or elsewhere and rights and liabilities under the law of any part of the United Kingdom or of any country or territory outside the United Kingdom; and
  - (e) rights and liabilities under enactments.
- (2) The transfers authorised by sub-paragraph (1)(a) above, and the interests and rights that may be created in accordance with a restructuring scheme, include transfers, interests and rights which are to take effect as if there were—
- (a) no such requirement to obtain any person’s consent or concurrence,
  - (b) no such liability in respect of a contravention of any other requirement, and
  - (c) no such interference with any interest or right,
- as there would be, in the case of any transaction apart from this Act, by reason of provisions having effect (whether under any enactment or agreement or otherwise) in relation to the terms on which the Corporation or any of its wholly-owned subsidiaries is entitled or subject to any property, right or liability.
- (3) Where apart from this sub-paragraph any person would have an entitlement, in consequence of anything done or likely to be done by or under this Act or the <sup>M110</sup>British Coal and British Rail (Transfer Proposals) Act 1993, to terminate, modify, acquire or claim an interest or right which, at the passing of this Act, is vested in the Corporation, or in any of its wholly-owned subsidiaries, or to treat any such interest or right as terminated or modified, then—
- (a) for the purposes of the transfer of the interest or right in accordance with a restructuring scheme, that entitlement shall not be enforceable in relation to that interest or right until after its transfer in accordance with such a scheme; and

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- (b) without prejudice to the preceding provisions of this paragraph or to paragraph 4(2)(b) below, that entitlement shall be enforceable in relation to the interest or right after its transfer only in so far as the scheme contains provision for it to be transferred subject to the provisions conferring that entitlement.
- (4) Subject to sub-paragraphs (5) and (6) below, nothing in sub-paragraph (1) or (2) above shall enable—
- (a) any agreement or instrument entered into or executed in pursuance of an obligation imposed by virtue of paragraph 2(1)(g) above, or
  - (b) anything done under any such agreement,
- to give effect to any transfer, or to create any interest or right, which could not apart from this paragraph have been made or created by or under that agreement or instrument.
- (5) A restructuring scheme may provide for—
- (a) the transfers to which effect is to be given by or under any agreement or instrument entered into or executed in accordance with the scheme, or
  - (b) the interests or rights that are to be created by or under any such agreement or instrument,
- to include, to such extent as may be specified in the scheme, any such transfer, interest or right as is mentioned in sub-paragraph (2) above.
- (6) A restructuring scheme may provide that sub-paragraph (3) above shall apply in relation to the provisions of any agreement or instrument which is to be entered into or executed in accordance with the scheme, and in relation to any proposal for such an agreement or for the execution of such an instrument, as if the reference in sub-paragraph (3)(b) above to provision contained in the scheme included a reference to provision contained, in accordance with the scheme, in the agreement or instrument.

**Marginal Citations**

M110 1993 c. 2.

*Supplemental provisions of schemes*

- 4 (1) A restructuring scheme may contain supplemental, incidental, consequential and transitional provision for the purposes of, or in connection with, any transfer of property, rights or liabilities for which the scheme provides or in connection with any other provisions contained in the scheme; and any such provision may include different provision for different cases or different purposes.
- (2) A restructuring scheme may, in relation to transfers in accordance with the scheme, make provision, either generally or for such purposes as may be specified in the scheme—
- (a) for the transfers to be regarded as taking place in a specified order;
  - (b) for the transferee to be treated as the same person in law as the Corporation or, as the case may be, its wholly-owned subsidiary;
  - (c) for agreements made, transactions effected or other things done by or in relation to the Corporation or any of its wholly-owned subsidiaries to be

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- treated, so far as may be necessary for the purposes of or in connection with the transfers, as made, effected or done by or in relation to the transferee;
- (d) for references in any agreement (whether or not in writing) or in any deed, bond, instrument or other document to, or to any member or officer of, the Corporation or any of its wholly-owned subsidiaries to have effect, so far as may be necessary for the purposes of or in connection with any of the transfers, with such modifications as are specified in the scheme;
- (e) for proceedings commenced by or against the Corporation or any of its wholly-owned subsidiaries to be continued by or against the transferee;
- (f) for any such questions about the effect of the scheme as arise between different transferees, or between any of the transferees on the one hand and the Corporation or any of its wholly-owned subsidiaries or a transferee under another scheme on the other, to be referred to such arbitration as may be specified in or determined under the scheme in question, and for determinations in any such arbitrations to be conclusive;
- (g) for a certificate as to the effect of the scheme which is given—
- (i) jointly by the Corporation and any one or more persons who are transferees under the scheme, or
  - (ii) by the Corporation or any such transferee with the concurrence as to the statements contained in the certificate of any other persons,
- to be conclusive as between the persons giving, or concurring in the giving of, the certificate.
- (3) Where any person is entitled, in consequence of any transfer made in accordance with a restructuring scheme or in pursuance of any provision made under this paragraph, to possession of a document relating in part to the title to, or to the management of, any land or other property in England and Wales—
- (a) the scheme may contain provision for treating that person as having given another person an acknowledgment in writing of the right of that other person to the production of the document and to delivery of copies thereof; and
  - (b) section 64 of the <sup>M111</sup>Law of Property Act 1925 (production and safe custody of documents) 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) Where any person is entitled, in consequence of any transfer made in accordance with a restructuring scheme or in pursuance of provision made under this paragraph, to possession of a document relating in part to the title to, or to the management of, any land or other property in Scotland transferred in accordance with a restructuring scheme, subsections (1) and (2) of section 16 of the <sup>M112</sup>Land Registration (Scotland) Act 1979 (omission of certain clauses in deeds) shall have effect in relation to the transfer as if the transfer had been effected by deed and as if from each of those subsections the words “unless specially qualified” were omitted.
- (5) Where a restructuring scheme makes provision in relation to any agreement contained in a licence granted under section 36 of the 1946 Act (licensing by Corporation of certain coal-mining operations and of coal exploration), that provision may include such modifications of that agreement, together with such modifications for the purposes of section 25(3) of this Act, as the Secretary of State considers appropriate in consequence of the provisions of Parts II and III of this Act.
- (6) In this paragraph—



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- (a) references to a transfer include references to the creation in any person's favour of any interest or right, and references to a transferee shall be construed accordingly; and
  - (b) references to a person who is entitled, in consequence of any transfer, to possession of a document, include references to the Corporation or any of its wholly-owned subsidiaries in a case where the Corporation or that subsidiary is entitled to retain possession of any document following any transfer.
- (7) Sub-paragraphs (2) to (5) above shall be without prejudice to the generality of sub-paragraph (1) above.

#### Marginal Citations

M111 1925 c. 20.

M112 1979 c. 33.

#### *Duties in relation to foreign property etc.*

- 5 (1) A restructuring scheme may provide for the imposition of duties on—
- (a) the Corporation or any of its wholly-owned subsidiaries, and
  - (b) any person to whom anything is transferred in accordance with the scheme, to take all such steps as may be requisite to secure that the vesting in that person, in accordance with the scheme, of any foreign property, right or liability is effective under the relevant foreign law.
- (2) The provisions of a restructuring scheme may require the Corporation or any of its wholly-owned subsidiaries, in performing any duty imposed on it by virtue of sub-paragraph (1) above, to comply with any directions of a person to whom anything is transferred in accordance with the scheme.
- (3) A restructuring scheme may provide that, until the vesting of any foreign property, right or liability of the Corporation or any of its wholly-owned subsidiaries in any person is effective under the relevant foreign law, it shall be the duty of the Corporation or that subsidiary to hold that property or right for the benefit of that person or, as the case may be, to discharge that liability on behalf of that person.
- (4) Nothing in any provision included by virtue of this paragraph in a restructuring scheme shall be taken as prejudicing the effect under the law of any part of the United Kingdom of the vesting in any person in accordance with the scheme of any foreign property, right or liability.
- (5) The Corporation and its wholly-owned subsidiaries shall each have all such powers as may be requisite for the performance of any duty imposed on it by virtue of this paragraph; but such a scheme may require a person to whom a transfer is made in accordance with the scheme to act (so far as possible) on behalf of the Corporation or its subsidiary for the purposes of, or in connection with, the performance of any such duty.
- (6) A restructuring scheme may provide that where—
- (a) any foreign property, rights or liabilities are acquired or incurred by the Corporation or any of its wholly-owned subsidiaries in respect of any other property, rights or liabilities, and

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- (b) by virtue of this paragraph the Corporation or its wholly-owned subsidiary holds the other property or rights for the benefit of another person or discharges the other liability on behalf of another person, the property, rights or liabilities acquired or incurred are immediately to become property, rights or liabilities of that other person; and the preceding provisions of this paragraph shall have effect accordingly in relation to the property, rights or liabilities acquired or incurred.
- (7) References in this paragraph to any foreign property, right or liability are references to any property, right or liability as respects which any issue arising in any proceedings would have to be determined (in accordance with any rules of private international law) by reference to the law of a country or territory outside the United Kingdom.
- (8) A restructuring scheme may provide—
- (a) for any obligation imposed by virtue of this paragraph to be enforceable as if contained in a contract between the person to whom the transfer in question is made and the Corporation or, as the case may be, its wholly-owned subsidiary; and
  - (b) for expenses incurred by the Corporation or any of its wholly-owned subsidiaries in consequence of any provision made by virtue of this paragraph to be met by that person.

*Modification of effect of scheme by agreement*

- 6 (1) This paragraph applies where any person to whom anything has been transferred in accordance with a restructuring scheme agrees in writing with another person to or from whom anything has been transferred in accordance with that or any other restructuring scheme that, for the purpose of modifying the effect of the scheme or, as the case may be, of modifying either or both of the schemes—
- (a) any or all of the property, rights or liabilities transferred in accordance with the scheme or either of them, and
  - (b) any or all of the property, rights or liabilities acquired or incurred since the transfer in respect of the transferred property, rights or liabilities,
- should be transferred from one to the other as from a date appointed by the agreement.
- (2) If—
- (a) the agreement is entered into within the period of twelve months after the time when a transfer in accordance with a restructuring scheme of property, rights or liabilities to any of its parties takes effect, and
  - (b) the Secretary of State has given his approval to the transfer for which the agreement provides and to its terms and conditions,
- then the transfer for which the agreement provides shall take effect on the date appointed by the agreement in the like manner as a transfer for which provision is made by a restructuring scheme.
- (3) Subject to the approval of the Secretary of State and to sub-paragraphs (4) to (6) below, the provisions that may be contained in a modification agreement shall include any such provision in relation to any transfer for which it provides as may be contained, in relation to any transfer for which a restructuring scheme provides, in that scheme.

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- (4) Nothing in any modification agreement shall provide for any interests or rights to be created, as opposed to transferred, except as between persons who are parties to the agreement.
- (5) A modification agreement shall have effect subject to the provisions of any enactment or subordinate legislation which makes provision, in relation to any transactions with the same effect, for the registration of anything in a statutory register.
- (6) The consent of the Treasury shall be required for the inclusion in a modification agreement of any provision having the effect of modifying any provision which is contained in a restructuring scheme for any of the purposes of Schedule 4 to this Act.
- (7) In this paragraph references to a transfer in accordance with a restructuring scheme include references to the creation of any interest, right or liability in accordance with such a scheme.
- (8) In this paragraph and the following provisions of this Schedule “modification agreement” means any agreement providing for a transfer which is to take effect in accordance with sub-paragraph (2) above.

*The Transfer of Undertakings (Protection of Employment) Regulations 1981*

- 7 (1) The 1981 regulations shall apply to any transfer of any undertaking or part of an undertaking in accordance with a restructuring scheme or modification agreement as if (in so far as that would not otherwise be the case) the references in those regulations to the transferor were references to the person in whom that undertaking or part was vested immediately before the coming into force of the transfer.
- (2) Nothing in the preceding provision of this Schedule shall authorise the making of any provision modifying the operation of the 1981 regulations in relation to any such transfer as is mentioned in sub-paragraph (1) above.
- (3) It shall be the duty of the Secretary of State, before making a restructuring scheme or approving a modification agreement, to give such notice of his proposals to such persons as he considers appropriate for enabling any provisions of the 1981 regulations applicable to any transfer in accordance with the scheme or agreement to be complied with by the person who for the purposes of the regulations is the transferor in relation to that transfer.
- (4) In this paragraph—

“the 1981 regulations” means the <sup>M113</sup>Transfer of Undertakings (Protection of Employment) Regulations 1981; and

“undertaking” has the same meaning as in the 1981 regulations.
- (5) This paragraph shall be without prejudice to the provisions of Schedule 5 to this Act.

**Marginal Citations**  
M113 S.I. 1981/1794.

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### *Compensation*

- 8 (1) Where, in consequence of any provisions included in a restructuring scheme for the purposes of any such division as is mentioned in paragraph 2(1) above, the interests, rights or liabilities of a third party are modified as mentioned in sub-paragraph (2) below, the third party shall be entitled to such compensation as may be just in respect of—
- (a) any diminution attributable to that modification in the value of any of his interests or rights; or
  - (b) any increase attributable to that modification in the burden of his liabilities.
- (2) The modifications mentioned in sub-paragraph (1) above are modifications by virtue of which—
- (a) an interest of the third party in any property is transformed into, or replaced by—
    - (i) an interest in only part of that property; or
    - (ii) separate interests in different parts of that property;
  - (b) a right of the third party against the Corporation or any of its wholly-owned subsidiaries is transformed into, or replaced by, two or more rights which do not include a right which, on its own, is equivalent (disregarding the person against whom it is enforceable) to the right against the Corporation or that subsidiary;
  - (c) a liability of the third party to the Corporation or any such subsidiary is transformed into, or replaced by, two or more separate liabilities at least one of which is a liability enforceable by a person other than the Corporation or that subsidiary; or
  - (d) any interests, rights or liabilities of the third party are altered in such other manner as does not either—
    - (i) relate to the identity of the person or persons against whom the third party's interests or rights are enforceable or of the person or persons by whom the liabilities to which he is or may become subject are enforceable; or
    - (ii) effect a modification in relation to which sub-paragraph (3) below would apply but for paragraph (c) of that sub-paragraph.
- (3) Where—
- (a) a third party would, apart from any provisions of a restructuring scheme or paragraph 3(3) above, have become entitled to, or to exercise, any interest or right arising or exercisable—
    - (i) in respect of the transfer or creation in accordance with such a scheme of any property, rights or liabilities, or
    - (ii) otherwise in respect of anything done by or under this Act or the <sup>M114</sup>British Coal and British Rail (Transfer Proposals) Act 1993,
  - (b) the provisions of that scheme or of paragraph 3(3) above have the effect of preventing that person's entitlement to, or to exercise, that interest or right from arising on any occasion in respect of anything mentioned in paragraph (a)(i) or (ii) above, and
  - (c) provision is not made by a restructuring scheme for securing that an entitlement to, or to exercise, that interest or right or an equivalent interest or right, is preserved or created so as to arise in respect of the first occasion

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when corresponding circumstances next occur after the coming into force of the transfers for which the scheme provides,

the third party shall be entitled to such compensation as may be just in respect of the extinguishment of the interest or right.

(4) A liability to pay compensation under this paragraph shall fall on the persons not themselves being third parties who, as the case may be—

- (a) have interests in the whole or any part of the property affected by the modification in question;
- (b) are subject to the rights of the person to be compensated which are affected by that modification;
- (c) are entitled to enforce the liabilities of the person to be compensated which are affected by that modification; or
- (d) benefit from the extinguishment of the entitlement mentioned in sub-paragraph (3) above;

and that liability shall be apportioned between those persons in such manner as may be appropriate having regard to the extent of their respective interests, rights or liabilities or the extent of the benefit they respectively obtain from the extinguishment.

(5) Where any liability falls by virtue of sub-paragraph (4) above on the Corporation or any of its wholly-owned subsidiaries, that sub-paragraph shall have effect subject to so much of any restructuring scheme (including the one which gives rise to the liability) as makes provision for the transfer of that liability to any other person.

(6) Any dispute as to whether, or as to the person by whom, any compensation is to be paid under this paragraph, and any dispute as to the amount of any compensation to be paid by any person, shall, according to whether the claimant requires the matter to be determined in England and Wales or in Scotland, be referred to and determined by—

- (a) an arbitrator appointed by the Lord Chancellor; or
- (b) an arbiter appointed by the Lord President of the Court of Session.

(7) This paragraph shall have effect in relation to the provisions of any agreement or instrument entered into or executed in pursuance of an obligation imposed by virtue of paragraph 2(1)(g) above, and to any modification agreement, as it has effect in relation to the provisions of a restructuring scheme.

(8) In this paragraph “third party”, in relation to provisions capable of giving rise to a right to compensation under this paragraph, means any person other than—

- (a) the Corporation or any of its wholly-owned subsidiaries;
- (b) the Authority or the Secretary of State;
- (c) a company which is wholly owned by the Crown at the time in relation to which those provisions have effect; or
- (d) where the provisions in question are the provisions of a restructuring scheme, any person whose consent to those provisions has been given for the purposes of section 12(4) of this Act or who has agreed to those provisions by virtue of being a party to an agreement under section 13 of this Act or a modification agreement.

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### Marginal Citations

M114 1993 c. 2.

### *Notice to persons affected by scheme*

- 9 (1) It shall be the duty of the Secretary of State, where it appears to him in the case of any restructuring scheme or modification agreement that there are persons whose property, rights or liabilities are affected in a manner that may give rise to an entitlement to compensation under paragraph 8 above, to give notice under this paragraph to every such person.
- (2) A notice to be given by the Secretary of State under this paragraph shall be given as soon as reasonably practicable after he makes the scheme or, as the case may be, gives his approval in relation to the agreement.
- (3) A notice under this paragraph shall set out the general effect of the scheme or, as the case may be, of the agreement and shall describe the respects in which it appears to the Secretary of State that the property, rights or liabilities of the person to whom it is given are affected.
- (4) For the purposes of section 63(3) of this Act, so far as it relates to the service of a notice under this paragraph, any address which—
- (a) has been specified to the Corporation or any of its wholly-owned subsidiaries, and
  - (b) is notified to the Secretary of State in pursuance of the Corporation's duty under section 14 of this Act,
- shall be deemed to have been specified to the Secretary of State.
- (5) Where it is not reasonably practicable for the notice under this section to any person to be given to that person in accordance with section 63 of this Act, the Secretary of State shall, instead, take such steps for publishing the contents of the notice as he may consider appropriate for the purpose of bringing the matters to which the notice relates to the attention of that person.

## SCHEDULE 3

Section 15.

### FINANCIAL STRUCTURE OF SUCCESSOR COMPANIES

#### *Meaning of “relevant successor company”*

- 1 In this Schedule “relevant successor company” means any successor company which is limited by shares.

#### *Initial Government holding in companies*

- 2 (1) As a consequence of the vesting in a relevant successor company, at a time when it is wholly owned by the Crown and in accordance with any restructuring scheme, of any property, rights and liabilities, that company shall issue such securities of the company as the Secretary of State may from time to time direct—

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- (a) to the Treasury or the Secretary of State; or
  - (b) to any person entitled to require the issue of the securities following their initial allotment, in accordance with directions of the Secretary of State, to the Treasury or the Secretary of State.
- (2) The Secretary of State shall not give a direction under sub-paragraph (1) above at a time when the relevant successor company in question has ceased to be wholly owned by the Crown.
- (3) Securities to be issued in pursuance of this paragraph shall be issued at such time or times, and (subject to sub-paragraph (4) below) on such terms, as the Secretary of State may direct.
- (4) Any shares of a relevant successor company issued in pursuance of this paragraph—
  - (a) shall be of such nominal value as the Secretary of State may direct; and
  - (b) shall be issued as fully paid and treated for the purposes of the <sup>M115</sup>Companies Act 1985 as if they had been paid up by virtue of the payment to the company of their nominal value in cash.
- (5) The Secretary of State may not exercise any power conferred on him by this paragraph, or dispose of any securities issued or of any rights to securities initially allotted to him in pursuance of this paragraph, without the consent of the Treasury.

**Marginal Citations**

M115 1985 c. 6.

*Government investment in companies*

- 3 (1) Subject to section 16 of this Act, the Treasury or, with the consent of the Treasury, the Secretary of State may at any time acquire—
  - (a) securities of a relevant successor company; or
  - (b) rights to subscribe for any such securities.
- (2) The Secretary of State shall not dispose of any securities or rights acquired by him by virtue of this paragraph without the consent of the Treasury.
- (3) Any expenses incurred by the Treasury or the Secretary of State in consequence of the provisions of this paragraph shall be paid out of money provided by Parliament.

*Exercise of functions through nominees*

- 4 (1) The Treasury or, with the consent of the Treasury, the Secretary of State may, for the purposes of paragraphs 2 and 3 above, appoint any person to act as the nominee, or one of the nominees, of the Treasury or the Secretary of State; but—
  - (a) the issue or allotment in pursuance of paragraph 2 above of securities of a relevant successor company to any nominee of the Treasury or the Secretary of State appointed for the purposes of that paragraph,
  - (b) the issue in pursuance of that paragraph of any such securities to any person entitled to be issued with the securities following their initial allotment to any such nominee, and

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- (c) the acquisition under paragraph 3 above by any nominee of the Treasury or the Secretary of State appointed for the purposes of that paragraph 3 of any securities or rights,

shall be in accordance with such directions as may be given from time to time by the Treasury or, with the consent of the Treasury, by the Secretary of State.

- (2) Any person holding any securities or rights as a nominee of the Treasury or the Secretary of State by virtue of this paragraph shall hold and deal with them (or any of them) on such terms and in such manner as the Treasury or, with the consent of the Treasury, the Secretary of State may direct.

*Payment of dividends etc. into Consolidated Fund*

- 5 Any dividends or other sums received by the Treasury or the Secretary of State in right of, or on the disposal of, any securities or rights acquired by virtue of paragraph 2 or 3 above shall be paid into the Consolidated Fund.

*Distributable reserves of companies*

- 6 (1) Where statutory accounts of a relevant successor company prepared as at any time would show the company as having net assets in excess of the aggregate of—
- (a) its called-up share capital, and
  - (b) the amount, apart from any property, rights and liabilities to which the company has become entitled or subject in accordance with any restructuring scheme, of its undistributable reserves,

then, for the purposes of section 263 of the <sup>M116</sup>Companies Act 1985 (profits available for distribution) and of the preparation as at that time of any statutory accounts of the company, that excess shall be treated, except so far as the Secretary of State may otherwise direct, as representing an excess of the company's accumulated realised profits over its accumulated realised losses.

- (2) For the purposes of section 264 of the <sup>M117</sup>Companies Act 1985 (restriction on distribution of assets) so much of any excess of a company's net assets as falls, in accordance with a direction under sub-paragraph (1) above, to be treated otherwise than as representing an excess of the company's accumulated realised profits over its accumulated realised losses shall be treated (subject to any modification of that direction by a subsequent direction under this paragraph) as comprised in the company's undistributable reserves.
- (3) A direction under this paragraph may provide, in relation to any amount to which it applies, that, on the realisation (whether before or after the company in question ceases to be wholly owned by the Crown) of such profits and losses as may be specified or described in the direction, so much of that amount as may be determined in accordance with the direction is to cease to be treated as mentioned in sub-paragraph (2) above and is to fall to be treated as comprised in the company's accumulated realised profits.
- (4) The Secretary of State shall not give a direction under this paragraph in relation to a relevant successor company at any time after the company has ceased to be wholly owned by the Crown.
- (5) In exercising his power to give a direction under this paragraph, the Secretary of State shall have regard, in particular, to the provisions of Schedule 4 to this Act and



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to any provision contained in any restructuring scheme by virtue of any provision of that Schedule.

(6) The consent of the Treasury shall be required for the giving of a direction under this paragraph.

(7) In this paragraph—

“called-up share capital” has the same meaning as in the <sup>M118</sup>Companies Act 1985;

“net assets” has the meaning given by subsection (2) of section 264 of that Act; and

“undistributable reserves” has the meaning given by subsection (3) of that section;

and references in this paragraph, in relation to a company, to statutory accounts are references to accounts of that company prepared in respect of any period in accordance with the requirements of that Act, or with those requirements applied with such modifications as are necessary where that period is not an accounting reference period.

#### **Marginal Citations**

**M116** 1985 c. 6.

**M117** 1985 c. 6.

**M118** 1985 c. 6.

#### *Temporary restrictions on borrowing of companies*

- 7
- (1) If articles of association of a relevant successor company confer on the Secretary of State powers exercisable with the consent of the Treasury for, or in connection with, restricting the sums of money which may be borrowed or raised during any period by the group to which that company belongs, those powers shall be exercisable in the national interest notwithstanding any rule of law and the provisions of any enactment.
- (2) For the purposes of this paragraph an alteration of the articles of association of a relevant successor company shall be disregarded if the alteration—
- (a) has the effect of conferring or extending any such power as is mentioned in sub-paragraph (1) above; and
- (b) is made at a time when that company has ceased to be wholly owned by the Crown.
- (3) In this paragraph “group”, in relation to a company, means that company and all of its subsidiaries taken together.

#### *Government lending to the companies*

- 8
- (1) Subject to the following provisions of this Schedule, the Secretary of State may, with the approval of the Treasury, make loans of such amounts as he thinks fit to a relevant successor company.
- (2) The Secretary of State shall not make a loan to a company under this paragraph except at a time when it is wholly owned by the Crown.

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- (3) Any loans which the Secretary of State makes under this paragraph shall be repaid to him at such times and by such methods, and interest thereon shall be paid to him at such rates and at such times, as he may, with the approval of the Treasury, from time to time direct.
- (4) The Treasury may issue out of the National Loans Fund to the Secretary of State such sums as are required by him for making loans under this paragraph.
- (5) Any sums received under sub-paragraph (3) above by the Secretary of State shall be paid into the National Loans Fund.
- (6) It shall be the duty of the Secretary of State as respects each financial year—
  - (a) to prepare, in such form as the Treasury may direct, an account of sums issued to him in pursuance of sub-paragraph (4) above and of sums received by him under sub-paragraph (3) above and of the disposal by him of the sums so issued or received; and
  - (b) to send the account to the Comptroller and Auditor General not later than the end of the month of August in the following financial year;
 and the Comptroller and Auditor General shall examine, certify and report on the account and shall lay copies of it, and of his report, before each House of Parliament.

*Treasury guarantees for loans made to companies*

- 9 (1) Subject to the following provisions of this Schedule, the Treasury may guarantee, in such manner and on such terms as they may think fit, the repayment of the principal of, the payment of interest on, and the discharge of any other financial obligation in connection with, any sums which are borrowed from a person other than the Secretary of State by any relevant successor company.
- (2) The Treasury shall not give a guarantee under this paragraph except at a time when the company in question is wholly owned by the Crown.
- (3) Immediately after a guarantee is given under this paragraph, the Treasury shall lay a statement of the guarantee before each House of Parliament; and immediately after any sum is issued for fulfilling a guarantee so given, the Treasury shall so lay a statement relating to that sum.
- (4) Any sums required by the Treasury for fulfilling a guarantee under this paragraph shall be charged on and issued out of the Consolidated Fund.
- (5) If any sums are issued in fulfilment of a guarantee given under this paragraph, the company whose obligations are so fulfilled shall make to the Treasury, at such times and in such manner as the Treasury may from time to time direct—
  - (a) payments of such amounts as the Treasury may so direct in or towards repayment of the sums so issued; and
  - (b) payments of interest on what is outstanding for the time being in respect of sums so issued at such rate as the Treasury may so direct.
- (6) Any sums received under sub-paragraph (5) above by the Treasury shall be paid into the Consolidated Fund.

*Limit on Government financial assistance for companies*

- 10 The aggregate of—

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- (a) any amounts outstanding by way of principal in respect of loans made by the Secretary of State under paragraph 8 above, and
  - (b) sums issued under paragraph 9 above in fulfilment of guarantees given under that paragraph,
- shall not exceed £3,000 million.

## SCHEDULE 4

Section 21.

### TAXATION PROVISIONS

#### PART I

##### CORPORATION TAX

##### *Interpretation of Part I*

- 1 (1) Subject to paragraph 24 below, in this Part of this Schedule “a relevant transfer” means any transfer in accordance with a restructuring scheme to a public-sector body of any property, rights or liabilities.
- (2) Subject to paragraph 24 below, in this Part of this Schedule—
- “the 1988 Act” means the <sup>M119</sup>Income and Corporation Taxes Act 1988;
  - “fixture” has the same meaning as in Chapter VI of Part II of the 1990 Act;
  - “predecessor”, in relation to any relevant transfer, means the person from whom the property, rights or liabilities in question are transferred;
  - “public-sector body” means the Treasury or any Minister of the Crown, the Authority, a local authority, any company which is wholly owned by the Crown or any body which is not a company but is established by or under any enactment for the purpose of carrying out functions conferred on it by any enactment or subordinate legislation; and
  - “transferee”, in relation to any relevant transfer, means the person to whom the property, rights or liabilities are transferred;
- and this Part of this Schedule shall be construed as one with the 1988 Act.
- (3) Subject to paragraph 7(8) below, in determining in relation to any transfer whether any such provision of this Schedule applies as is a provision applying if, by virtue of the coming into force of any relevant transfer, the predecessor is to be treated as having ceased to carry on any trade or the transferee is to be treated as having begun to carry one on, where—
- (a) the predecessor continues to carry on any trade or part of a trade after the coming into force of the transfer,
  - (b) the predecessor ceases, by virtue of any provisions of a restructuring scheme coming into force at the same time as the transfer, to carry on any trade or part of a trade which is not transferred to the transferee, or
  - (c) the transferee was carrying on any trade before the coming into force of the transfer,

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the trade or part of a trade which is continued or ceases to be carried on by the predecessor or, as the case may be, was being carried on shall for the purposes of that provision be treated in relation to any trade or part of a trade which is transferred by virtue of the transfer as a separate trade and, accordingly, shall be disregarded.

- (4) References in this Schedule to any provision of the 1992 Act shall have effect, in relation to times in any chargeable period beginning before 6th April 1992, as references to the corresponding enactment having effect in relation to that time.

#### Marginal Citations

M119 1988 c. 1.

#### *Chargeable gains: general*

- 2 (1) For the purposes of the 1992 Act, where there is a relevant transfer, the transfer of the property, rights and liabilities to which it relates shall (subject to the following provisions of this Part of this Schedule) be deemed, in relation to the transferee as well as the predecessor, to be for a consideration such that no gain or loss accrues to the predecessor.
- (2) Section 28 of the 1992 Act (time of disposal or acquisition in pursuance of contract) shall have effect in relation to any disposal or acquisition in pursuance of an obligation imposed by virtue of paragraph 2(1)(g) of Schedule 2 to this Act as it would apply if the obligation were contained in a contract made at the time when the scheme containing the obligation comes into force.
- (3) Paragraph (d) of section 35(3) of the 1992 Act (list of provisions for transfers treated as made without gain or loss) shall have effect with the insertion, at the end of the paragraph, of the following sub-paragraph—
- “(xi) paragraph 2(1) of Schedule 4 to the Coal Industry Act 1994;”.

#### *Chargeable gains: compensation and insurance money*

- 3 (1) Subsections (4) and (5) of section 23 of the 1992 Act (adjustments where compensation or insurance money used for purchase of replacement asset) shall have effect in accordance with sub-paragraph (2) below where—
- (a) there is a relevant transfer such that any capital sum which has been or (but for the transfer) would have been received by the predecessor by way of compensation for the loss or destruction of any asset, or under a policy of insurance of the risk of the loss or destruction of any asset, becomes available to the transferee; and
- (b) the transferee acquires any asset in circumstances where, if the predecessor had acquired it, the predecessor would be treated for the purposes of that section as having acquired it by the application of the whole or any part of that sum in replacement for the asset lost or destroyed.
- (2) In a case falling within sub-paragraph (1) above, subsection (4) or, as the case may require, subsection (5) of section 23 of the 1992 Act shall have effect as if the transferee and the predecessor were the same person except that—

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- (a) it shall, subject to paragraph (b) below, be the transferee who shall be entitled as owner to make a claim for that subsection to be applied in relation to the transactions;
  - (b) any adjustment falling to be made under paragraph (a) of subsection (4) or, as the case may be, subsection (5) of that section shall have effect for the purposes only of the taxation of whichever of the predecessor and the transferee received the capital sum; and
  - (c) any adjustment falling, on a claim by the transferee, to be made under paragraph (b) of subsection (4) or, as the case may be, subsection (5) of that section shall have effect for the purposes only of the taxation of the transferee.
- (3) Sub-paragraph (2) above shall have effect for the purposes of any such adjustment as is mentioned in paragraph (c) of that sub-paragraph so as to require any residual or scrap value received by the predecessor to be treated as received by the transferee.

*Chargeable gains: section 30 of the 1992 Act*

- 4 Section 30 of the 1992 Act (tax-free benefits) shall not apply in any case where—
- (a) a reduction in the value of any asset, or
  - (b) the conferring of any tax-free benefit,
- results from any provision made by or under so much of any restructuring scheme as relates to a relevant transfer.

*Chargeable gains: section 41 of the 1992 Act*

- 5 Subject to paragraph 21 below, section 174(1) of the 1992 Act (which applies section 41 of that Act to cases where assets have been acquired without gain or loss) shall have effect, without prejudice to paragraph 2 above, where there has been a relevant transfer as if the property to which the transfer relates had been transferred to the transferee, and acquired by him, in relevant circumstances (within the meaning of that section).

*Chargeable gains: options*

- 6 (1) Where in the case of any relevant transfer the transferee becomes entitled, in consequence of the transfer, to any option granted to the predecessor, section 144 of the 1992 Act (options), so far as it requires an option to be treated as part of a larger transaction, shall have effect as if the option had originally been granted to the transferee for the consideration for which it was granted to the predecessor.
- (2) Where in the case of any relevant transfer the transferee is bound, in consequence of the transfer, by an option granted by the predecessor, that section, so far as it requires any option to be treated as part of a larger transaction, shall have effect as if the option had originally been granted by the transferee for the consideration for which it was granted by the predecessor and, if the case so requires, as if the transferee had entered into that transaction.
- (3) Sub-paragraph (2) above shall not apply in the case of any option in so far as any disposal made by the transferee by virtue of any exercise of that option before the time when the relevant transfer comes into force is one which falls, under section 28 of the 1992 Act (time of disposal etc.), to be treated as made before that time; and, accordingly, any disposal by the transferee which falls to be treated as so made and

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also, as mentioned in that sub-paragraph, to be treated as part of a larger transaction, shall be assumed for the purposes of the 1992 Act to be a disposal by the predecessor.

- (4) The preceding provisions of this paragraph shall not affect the rights and liabilities of the predecessor, or confer any rights or liabilities on the transferee, in respect of any adjustment falling to be made in consequence of the option in question having been differently treated, for the purposes of the taxation of the predecessor, in relation to a time before the conditions for its being treated as part of a larger transaction were satisfied.

*Chargeable gains: roll-over relief*

- 7 (1) Where, apart from this sub-paragraph—
- (a) the predecessor would be treated for the purposes of section 152 of the 1992 Act as having ceased, by virtue of the coming into force of any relevant transfer, to carry on any trade, and
  - (b) the transferee would be treated as having begun, on the coming into force of that transfer, to carry it on,
- that section shall have effect as if any assets to which the transfer relates which, for the purposes of that section and in accordance with sub-paragraph (8) below, would fall immediately before the transfer comes into force to be treated in relation to the period of ownership as assets that have been used to any extent by the predecessor for the purposes of the trade were, as at the time immediately after the coming into force of the transfer, to be treated in relation to the period of ownership as assets that the transferee has used to the same extent for the purposes of that trade.
- (2) Where any assets vest by virtue of a relevant transfer in the transferee—
- (a) the predecessor shall not be entitled, at any time after the coming into force of the transfer, to make any claim under section 152 or 153 of the 1992 Act in respect of the acquisition by the predecessor of those assets; and
  - (b) subject to sub-paragraph (3) below, the transferee shall not be treated for the purposes of either of those sections or section 154 of that Act as having applied the whole or any part of the consideration for any disposal in acquiring those assets by means of that transfer.
- (3) Where, in the case of any relevant transfer—
- (a) the predecessor acquired any assets or any interest in any assets before the coming into force of the transfer,
  - (b) the assets or interest vest or vests in the transferee by virtue of the transfer,
  - (c) the acquisition is not one in respect of which the predecessor has made a claim under section 152 or 153 of the 1992 Act before the coming into force of the transfer,
  - (d) after the coming into force of the transfer the transferee disposes of, or of an interest in, any other assets, and
  - (e) the acquisition was such that, if the predecessor had been able to make and had made the disposal and obtained the consideration for it, the predecessor would have been regarded for the purposes of section 152 or 153 of that Act as having applied the consideration, or any part of it, in making the acquisition,

then, on a claim by the transferee, section 152 and, so far as necessary, section 153 of that Act shall have effect for the purposes of paragraph 2 above in relation to

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the acquisition as they would have effect if the acquisition had been made by the transferee and the assumptions specified in sub-paragraph (4) below applied.

- (4) Those assumptions are—
- (a) that the acquisition was made by the application by the transferee of the consideration or, as the case may be, the part of it mentioned in sub-paragraph (3)(e) above;
  - (b) that any period of ownership by the predecessor of any assets was a period of ownership of those assets by the transferee;
  - (c) that any use by the predecessor of any assets for the purposes of any trade which was, at the time, being carried on by the predecessor had been use by the transferee for the purposes of that trade; and
  - (d) that any trade for the purposes of which the transferee is assumed by virtue of paragraph (c) above to have used any asset was a trade which was being carried on by the transferee at the time.

- (5) Where—
- (a) a held-over gain would, but for the provisions of section 154 of the 1992 Act, have been carried forward to a depreciating asset, and
  - (b) that asset is transferred by a relevant transfer and immediately after the coming into force of that transfer is used by the transferee for the purposes of a trade carried on by him,

that section shall have effect as if the gain had accrued to, and the claim for it to be held over had been made by, the transferee and, accordingly, as if the transferee had acquired the depreciating asset at the time when the predecessor acquired it and as if the assumptions specified in sub-paragraph (4)(c) and (d) above applied.

- (6) Expressions used in sub-paragraph (5) above which are also used in section 154 of the 1992 Act have the same meanings in that sub-paragraph as in that section.
- (7) Section 158 of the 1992 Act (extension of references to trade) shall have effect, subject to sub-paragraph (8) below, in relation to this paragraph as it has effect in relation to sections 152 to 157 of that Act.
- (8) For the purposes of this paragraph, any assets so far as used by the predecessor—
- (a) for the purposes of any part of a trade, or
  - (b) for the purposes of the whole or any part of any trade which is treated by virtue of subsection (8) of section 152 of the 1992 Act as forming a single trade with any one or more other trades,

shall be treated as used for the purposes of every part of the trade carried on by the predecessor or, as the case may be, for the purposes of every part of every trade so carried on.

#### *Chargeable gains: group transactions*

- 8 (1) For the purposes of section 179 of the 1992 Act (company ceasing to be a member of a group) where by virtue of any relevant transfer any company—
- (a) ceases to be a member of the same group of companies as the predecessor, but
  - (b) becomes a member of the same group of companies as the transferee,

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that company shall not under that section be treated, in consequence of having so ceased, as at any time having sold, and immediately reacquired, any asset acquired from a company which is or has been a member of the former group.

- (2) Subject to sub-paragraph (3) below, where sub-paragraph (1) above applies, or but for subsection (2) of section 179 of the 1992 Act would apply, as respects any acquisition of any asset and the company that acquired the asset ceases to be a member of the same group of companies as the transferee, that section shall have effect as if—
- (a) that asset had been acquired from the transferee; and
  - (b) that company had been a member of the same group of companies as the transferee when it was so acquired;

and where, for the purposes of that subsection, this sub-paragraph applies as respects more than one of a number of successive acquisitions of any asset, the fact that each is to be treated as an acquisition from the same person shall be disregarded.

- (3) Where—
- (a) any asset has been acquired by any company (“the leaving company”) from another company,
  - (b) both of those companies cease at the same time to be members of the same group of companies as the transferee, and
  - (c) those companies are associated companies both immediately before and immediately after that time,
- sub-paragraph (2) above shall not apply as respects the acquisition of the asset by the leaving company.
- (4) Expressions used in this paragraph and in section 179 of the 1992 Act shall have the same meanings in this paragraph as in that section.

*Chargeable gains: disposal of debts*

- 9 (1) Where in the case of any relevant transfer—
- (a) any debt owed to the predecessor is transferred by virtue of the transfer to the transferee, and
  - (b) the predecessor would, apart from this sub-paragraph, be the original creditor in relation to that debt for the purposes of section 251 of the 1992 Act (disposal of debts),
- that Act shall have effect as if the transferee and not the predecessor were the original creditor for those purposes.
- (2) Subject to the following provisions of this paragraph, where in the case of any relevant transfer—
- (a) there is transferred by virtue of the transfer to the transferee either a debt owed to the predecessor or the rights and liabilities of the predecessor under any guarantee, and
  - (b) the transferred debt is, or any debt arising by virtue of those rights and liabilities would be, either—
    - (i) a right to the repayment of any amount outstanding as principal on a loan which is a qualifying loan for the purposes of either of sections 253 and 254 of the 1992 Act, or



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- (ii) a right to recover any amount paid under a guarantee for the repayment of such a loan or of any loan which would be such a loan but for section 253(1)(c) of that Act,

those sections shall have effect as if the loan or, as the case may be, the guarantee and any payment by the predecessor under the guarantee had been made or given by the transferee and, accordingly, as if there had been no assignment of the right to recover the principal of the loan or of any right to recover an amount paid under the guarantee.

- (3) Where sub-paragraph (2) above applies, sections 253 and 254 of the 1992 Act and this paragraph shall have effect as if the companies which, in relation to times before the relevant transfer comes into force, are to be treated as having been members of the same group of companies as the transferee included the predecessor and any company which at any such time was a member of the same group of companies as the predecessor.

- (4) Where—

- (a) any right to the recovery of any amount is transferred by virtue of any relevant transfer,
- (b) any amount outstanding in respect of that right is recovered at any time by the transferee or by a company in the same group of companies as the transferee, and
- (c) that amount is such that, if that transfer had not come into force and the amount in question had been recovered by the predecessor or a company in the same group as the predecessor, a chargeable gain would be treated as having accrued to the predecessor or that company under section 253(5) to (8) or 254(9) or (10) of the 1992 Act,

then a chargeable gain of the same amount shall be treated, instead, as having accrued at that time to the transferee, or as the case may be, the company in the same group as the transferee.

- (5) Sub-paragraph (2) above shall not, in relation to any relevant transfer—

- (a) affect the allowable losses that have been or are to be treated, in pursuance of any claim made under section 253(3) or (4) or 254(2) of the 1992 Act before the coming into force of the transfer, as having accrued to the predecessor in respect of any amount; or
- (b) entitle the transferee to make any claim under section 253(3) or (4) or 254(2) of that Act for the purpose of requiring any allowable loss to be treated as having accrued to the transferee in respect of any amount in respect of which an allowable loss to which paragraph (a) above applies has been or is to be treated as having accrued;

and a relevant transfer shall be disregarded for the purposes of section 253(9) of the 1992 Act.

- (6) For the purposes of subsection (10) of section 253 of the 1992 Act, where there is a relevant transfer, any amount taken into account as mentioned in that subsection in the case of the predecessor shall be deemed also to have been so taken into account in the case of the transferee.

- (7) Section 253(13) and section 255(3) of the 1992 Act shall apply in relation to sub-paragraph (4) above for the purposes, respectively, of cases corresponding to those falling within subsections (7) and (8) of section 253 of that Act and cases

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corresponding to those falling within subsection (10) of section 254 of that Act, as they apply for the purposes of those subsections.

*Chargeable gains: assets held before 6th April 1965*

10 Schedule 2 to the 1992 Act (assets held on 6th April 1965) shall have effect in relation to any assets which vest in the transferee by virtue of a relevant transfer as if—

- (a) the predecessor and the transferee were the same person; and
- (b) those assets, so far as they were in fact acquired or provided by the predecessor, were acquired or provided by the transferee.

*Transfers of trading stock*

11 (1) For the purposes of the Corporation Tax Acts if, in the case of any relevant transfer, any trading stock of the predecessor—

- (a) is vested in the transferee by virtue of the transfer, and
- (b) falls, immediately after the time when the transfer comes into force, to be treated as trading stock of the transferee,

then, for the purpose of computing the profits and gains both of the trade in relation to which it is trading stock immediately before that time and of the trade in relation to which it is trading stock after that time, sub-paragraph (2) below shall apply to the stock.

(2) Where this sub-paragraph applies to any stock, that stock—

- (a) shall be deemed—
  - (i) to have been disposed of by the predecessor in the course of the trade that is carried on by the predecessor;
  - (ii) to have been acquired by the transferee in the course of the trade that is carried on by the transferee; and
  - (iii) subject to that, to have been disposed of and acquired at the time when the transfer comes into force;

and

- (b) shall be valued for the purposes of each of the trades mentioned in sub-paragraph (1) above as if the disposal and acquisition had been for a consideration which in relation to the predecessor would have resulted in neither a profit nor a loss being brought into account in respect of the disposal in the accounting period of the predecessor which ends with, or is current at, that time.

(3) In this paragraph “trading stock” has the same meaning as in section 100 of the 1988 Act.

*Transfer of rights to receipts*

12 Where by virtue of any relevant transfer there is transferred any right of the predecessor to receive any amount which is for the purposes of corporation tax—

- (a) an amount brought into account as a trading receipt of the predecessor for any accounting period ending before the time when the transfer comes into force, or

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- (b) an amount falling to be so brought into account if it is assumed that the last such accounting period of the predecessor ended immediately before that time,

the transfer shall not require any modification of the way that amount has been and is to be treated in relation to the predecessor for those purposes or entitle any amount due or paid in respect of that right to be treated as a trading receipt of the transferee for any accounting period.

#### *Transfer of liabilities*

- 13 (1) If, by virtue of any relevant transfer, there is transferred any liability the amount of which is for the purposes of corporation tax—

- (a) an amount brought into account as deductible in computing the predecessor's profits, or any description of the predecessor's profits, for any accounting period ending before the time when the transfer comes into force, or
- (b) an amount falling to be so brought into account if it is assumed, where it is not the case, that the accounting period of the predecessor current on the day before the transfer comes into force ends immediately before that time,

then that transfer shall not require any modification of the way that amount has been or is to be treated in relation to the predecessor for those purposes or entitle any amount due or paid in respect of that liability to be deductible in computing the transferee's profits, or any description of the transferee's profits, for any accounting period.

- (2) Where the amount of any liability which in consequence of any relevant transfer falls to be discharged by the transferee is an amount which would (but for that and any other transfer) have fallen to be deductible in computing the predecessor's profits, or any description of the predecessor's profits, for any accounting period beginning with the coming into force of the transfer or at any subsequent time, that amount—

- (a) shall not be so deductible; but
- (b) subject to sub-paragraph (3) below, shall be deductible in computing the transferee's profits to the same extent as if the transferee had become subject to the obligation in pursuance of which the liability arises or has arisen at the same time and for the same consideration, and otherwise on the same terms and in the same circumstances, as the predecessor;

and for the purposes of this sub-paragraph it shall be assumed, where it is not the case, that the accounting period of the predecessor current on the day before the transfer comes into force ends immediately before the coming into force of that transfer.

- (3) For the purposes of corporation tax, where any relevant transfer has the effect that any liability falls to any extent to be discharged by the transferee instead of by the predecessor, the amounts deductible in computing the transferee's profits, or any description of the transferee's profits, for any accounting period shall not include any amount in respect of so much of that liability as falls to be so discharged unless it is an amount which (but for that and any other transfer) would have fallen to be deductible in computing the predecessor's profits, or any description of the predecessor's profits, for any accounting period beginning or ending after the coming into force of that transfer.

- (4) The preceding provisions of this paragraph shall apply in relation to the deduction of charges on income against the total profits of the predecessor or transferee for any

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period as they apply in relation to the deduction of any amount in the computation for that period of the profits of the predecessor or, as the case may be, of the transferee.

- (5) For the purposes of Chapter II of Part VI of the 1988 Act (definition of distributions), where in the case of any relevant transfer any consideration given or treated as given in respect of a security relating to—

- (a) any liability, or
- (b) the use of the principal to which any liability, being a liability to interest or an equivalent liability, relates,

would fall (apart from this sub-paragraph) to be regarded for those purposes as new consideration received by the predecessor, that consideration shall be treated instead, to the extent that it relates to so much of the liability as falls in consequence of the transfer to be discharged by the transferee and is not a liability to which sub-paragraph (1) above applies, as if it were new consideration received by the transferee.

*Losses to be retained by the predecessor*

- 14 (1) Notwithstanding anything in the preceding provisions of this Part of this Schedule or in Schedule 2 or 3 to this Act, the relevant unallowed tax losses of the predecessor—
- (a) shall not be capable, at any time after a relevant transfer comes into force, of being brought into account for any of the purposes of the Corporation Tax Acts in relation to the taxation of the transferee; but
  - (b) shall continue, to the same extent as before, to be treated after any relevant transfer as unallowed tax losses of the predecessor.
- (2) In sub-paragraph (1) above “relevant unallowed tax losses” means—
- (a) if the accounting period of the predecessor ends immediately before the coming into force of the relevant transfer, the unallowed tax losses of the predecessor as at the end of that period; and
  - (b) in any other case, any losses, expenses, charges or amounts which would be unallowed tax losses of the predecessor immediately before the coming into force of the relevant transfer, if an accounting period of the predecessor had ended at that time.
- (3) In this paragraph “unallowed tax losses” means any losses, expenses, charges or amounts which are tax losses within the meaning of section 400(2)(a), (b), (d) or (e) of the 1988 Act.

*Section 35 of the 1988 Act*

- 15 (1) Section 35 of the 1988 Act (charge on lease granted at an undervalue) shall not apply in the case of any lease the grant of which is effected by means of a relevant transfer.
- (2) Section 87 of the 1988 Act (taxable premiums) shall not apply where there is an amount which would have become chargeable in relation to any land but for sub-paragraph (1) above; and, accordingly, references to any such amount shall not be included in references in that section to the amount chargeable.
- (3) In this paragraph “lease” has the same meaning as in Part II of the 1988 Act.

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### *Group relief*

- 16 The existence of the powers of the Secretary of State under section 12 of and Schedule 2 to this Act shall not be regarded as constituting arrangements within the meaning of section 410 of the 1988 Act (arrangements for the transfer of a company to another group or consortium) or as constituting option arrangements for the purposes of paragraph 5B of Schedule 18 to that Act.

### *Special provision for successor companies*

- 17 (1) Where—
- (a) by virtue of any relevant transfer any liability for any loan made to the predecessor vests in a successor company, and
  - (b) at the coming into force of that transfer that company is wholly owned by the Crown,
- the vesting of liability for that loan in that company shall not affect any direction in respect of the loan given or having effect as if given by the Treasury under section 581 of the 1988 Act (income tax exemption for interest on foreign currency securities).
- (2) Any share issued by a successor company in pursuance of paragraph 2 of Schedule 3 to this Act shall be treated for the purposes of the Corporation Tax Acts as if it had been issued wholly in consideration of a subscription paid to that company of an amount equal to the nominal value of the share.
- (3) Any debenture issued by a successor company in pursuance of paragraph 2 of Schedule 3 to this Act shall be treated for the purposes of the Corporation Tax Acts as if it had been issued—
- (a) wholly in consideration of a loan made to that company of an amount equal to the principal sum payable under the debenture; and
  - (b) wholly and exclusively for the purposes of the trade carried on by that company.
- (4) If any debenture issued as mentioned in sub-paragraph (3) above includes provisions for the payment of a sum expressed as interest in respect of a period which falls wholly or partly before the issue of the debenture, any payment made in pursuance of that provision in respect of that period shall be treated for the purposes of the Corporation Tax Acts as if the debenture had been issued at the commencement of that period and, accordingly, as interest on the principal sum payable under the debenture.

### *Leased assets*

- 18 (1) For the purposes of section 781 of the 1988 Act (assets leased to traders and others), where the interest of the lessor or the lessee under a lease, or any other interest in an asset, vests in any person by virtue of a relevant transfer—
- (a) the transfer shall be treated as made without any capital sum having been obtained in respect of that interest by the predecessor or the transferee; and
  - (b) in a case where the interest is an interest under a lease, payments made by the predecessor under the lease before the coming into force of the transfer shall be deemed to have been made under that lease by the transferee.
- (2) Section 782 of the 1988 Act (deduction of payment under leases: special cases) shall not apply to any payments made—

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- (a) under any lease granted for the purposes of the creation in accordance with a restructuring scheme of any leasehold interest, including, where effect has been given without the grant of a lease to the creation of a leasehold interest in accordance with such a scheme, any lease which for those purposes is deemed to have been granted; or
  - (b) under any lease granted by a person whose ability to grant that lease derives from the transfer to him in accordance with a restructuring scheme of the asset to which the lease relates.
- (3) In this paragraph “lease” and “asset” have the meanings given by section 785 of the 1988 Act and references to a leasehold interest are references to any such interest as may subsist under a lease.

*Continuity in relation to capital allowances etc. where trade transferred*

- 19 (1) Subject to the following provisions of this Part of this Schedule, where, apart from this paragraph—
- (a) the predecessor would be treated for the purposes of the Corporation Tax Acts as having ceased, by virtue of the coming into force of a relevant transfer, to carry on any trade, and
  - (b) the transferee would be treated as having begun, on the coming into force of that transfer, to carry it on,
- then the trade shall not be treated as permanently discontinued, nor a new trade as set up, for the purposes of the allowances and charges provided for by the Capital Allowances Acts, but sub-paragraphs (2) to (4) below shall apply.
- (2) Subject to sub-paragraphs (3) and (4) below, in a case falling within sub-paragraph (1) above—
- (a) there shall be made to or on the transferee in accordance with the Capital Allowances Acts all such allowances and charges as would, if the predecessor had continued to carry on the trade, have fallen to be made to or on the predecessor; and
  - (b) the amount of any such allowance or charge shall be computed as if—
    - (i) the transferee had been carrying on the trade since the predecessor began to do so; and
    - (ii) everything done to or by the predecessor had been done to or by the transferee (but so that the relevant transfer itself, so far as it relates to any assets in use for the purpose of the trade, shall not be treated as giving rise to any allowance or charge).
- (3) For the purposes of the Corporation Tax Acts, only such amounts (if any) as may be specified in or determined in accordance with the restructuring scheme providing for a relevant transfer shall be allocated to the transferee in respect of—
- (a) expenditure by reference to which capital allowances may be made by virtue of sub-paragraph (2) above in relation to anything to which the transfer relates; and
  - (b) allowances which (apart from the allocation and irrespective of what are in fact the accounting periods of the predecessor) would, under section 145(2) of the 1990 Act, be carried forward, in relation to anything to which

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the transfer relates, to an accounting period of the predecessor beginning immediately before the coming into force of that transfer.

- (4) Sub-paragraph (2) above shall affect the amounts falling to be taken into account in relation to the predecessor—
- (a) as expenditure by reference to which capital allowances may be made, or
  - (b) as an allowance carried forward under section 145(2) of the 1990 Act,
- only so far as necessary to give effect to a reduction of any such amount by a sum equal to so much of that amount as is allocated to the transferee as mentioned in sub-paragraph (3) above.
- (5) Subject to sub-paragraph (6) below, the provisions of a restructuring scheme providing for the determination of any amount which for the purposes of sub-paragraph (3) above is to be allocated, in the case of any relevant transfer, to the transferee may include provision—
- (a) for such a determination to be made by the Secretary of State in such manner as may be described in the scheme;
  - (b) for any amount determined to be calculated by reference to such factors or to the opinion of such person as may be so described; and
  - (c) for a determination under those provisions to be capable of being modified, on one or more occasions, in such manner and in such circumstances as may be so described.
- (6) The consent of the Treasury shall be required for the making or modification of a determination of any such amount as is mentioned in sub-paragraph (5) above; and the consent of the transferee shall also be required for any such modification after the relevant transfer.

*Capital allowances in cases where paragraph 19 does not apply*

- 20 (1) Subject to paragraph 21 below, the Capital Allowances Acts shall have effect in accordance with this paragraph in relation to any property if—
- (a) it is property to which a relevant transfer relates; and
  - (b) paragraph 19 above does not apply in relation to its transfer to the transferee;
- and in this paragraph “the relevant scheme”, in relation to property to which a relevant transfer relates, means the restructuring scheme that provides for that transfer.
- (2) Where—
- (a) subsection (6) of section 21 of the 1990 Act (transfer of industrial buildings or structures to be deemed to be sale at market price) applies on the relevant transfer in relation to the property, and
  - (b) the relevant scheme contains provision for the sale of that property which is deemed to occur by virtue of that subsection (6) to be deemed for the purposes of the Capital Allowances Acts to be at a price specified in or determined in accordance with the scheme,
- that deemed sale shall be treated as a sale at the price so specified or determined (instead of at the price determined in accordance with that subsection or any other provision of those Acts), sections 157 and 158 of the 1990 Act shall not apply and that provision of the scheme shall have an equivalent effect in relation to the expenditure

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which the transferee is to be treated as having incurred in making the corresponding purchase.

(3) Where the property is plant or machinery which would, for the purposes of the Capital Allowances Acts, be treated on the coming into force of the relevant transfer as disposed of by the predecessor to the transferee and the relevant scheme contains provision for the disposal value of that property to be deemed for the purposes of those Acts to be of such amount as may be specified in or determined in accordance with the scheme—

- (a) that provision shall have effect, instead of section 26(1) or 59 of the 1990 Act, for determining an amount as the disposal value of the property or, as the case may be, as the price at which any fixture is to be treated as sold;
- (b) the transferee shall be deemed to have incurred expenditure of that amount on the provision of that property; and
- (c) in the case of a fixture, the expenditure which falls to be treated as incurred by the transferee shall be deemed for the purposes of section 54 of that Act to be incurred by the giving of a consideration consisting in a capital sum of that amount.

(4) Where—

- (a) the predecessor has been carrying on a trade of mineral extraction, and
- (b) the relevant scheme contains provision for the amount specified in or determined in accordance with the scheme to be brought into account under section 99 of the 1990 Act (disposal receipts in relation to mineral extraction allowances) as a disposal receipt,

that amount, instead of any other amount, shall be so brought into account as such a receipt in respect of the transfer of the property in accordance with the relevant scheme or of the predecessor's otherwise ceasing to use the property in consequence of that transfer.

(5) Where—

- (a) the acquisition of the property by the transferee in accordance with the relevant scheme would be a balancing event for the purposes of Part V of the 1990 Act (agricultural buildings etc.) if an election were made under section 129(2) of that Act, and
- (b) the relevant scheme contains provision for the price paid by the transferee to the predecessor for the property to be deemed, for the purposes of the Capital Allowances Acts, to be such amount as may be specified in or determined in accordance with the scheme,

such an election shall be deemed to have been made and the sale moneys related to that event shall be deemed for the purposes of section 128(2) of that Act (calculation of balancing allowance or charge) to be equal to that amount.

(6) Where—

- (a) the transfer of the property in accordance with the relevant scheme would be a relevant event for the purposes of section 138 of the 1990 Act (assets representing allowable scientific research expenditure ceasing to belong to traders), and
- (b) the relevant scheme contains provision for an amount specified in or determined in accordance with the scheme to be treated for the purposes of subsection (2) of that section as the disposal value of that property,

that section shall have effect accordingly.



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- (7) A disposal or acquisition in relation to which provision is made by the relevant scheme under any of sub-paragraphs (4) to (6) above shall not for any of the purposes of the 1990 Act be treated as, or as part of, a transaction falling within section 157(1) (a) of that Act (sales between connected persons etc.).
- (8) Sub-paragraphs (5) and (6) of paragraph 19 above shall apply in relation to any determination of any amount in accordance with any provision made by a restructuring scheme for the purposes of this paragraph as they apply for the purposes of a determination such as is mentioned in those sub-paragraphs.

*Capital allowances in cases where interests created by restructuring scheme*

- 21 (1) This paragraph shall apply where—
- (a) an interest or right in or in relation to any property (“the relevant property”) is retained, or under paragraph 24 below is deemed to be retained, by the predecessor following any relevant transfer; and
  - (b) any other interest or right in or in relation to that property vests by virtue of that transfer in the transferee;
- and in this paragraph references to the retained property are references to the interest or right mentioned in paragraph (a) above and references to the transferred property are references to the interest or right mentioned in paragraph (b) above.
- (2) Where—
- (a) the relevant transfer is one which is deemed to be made by virtue of paragraph 24(4) below, and
  - (b) the restructuring scheme in accordance with which it is made provides for this sub-paragraph to apply in relation to the relevant property,
- the Capital Allowances Acts, sections 41 and 174 of the 1992 Act and paragraphs 19 and 20 above shall have effect for all purposes as if the interests or rights of the predecessor in or in relation to the relevant property had always been confined to the retained property and, accordingly, as if all allowances and charges made to or on the predecessor in relation to the relevant property, and anything done by or with respect to the predecessor in relation to the relevant property, had been made or done in relation to the retained property.
- (3) Where—
- (a) any interest or right of any person is under sub-paragraph (2) above to be treated as having always been confined to a particular interest or right in or in relation to any property,
  - (b) that property is a fixture, and
  - (c) any of the requirements of Chapter VI of Part II of the 1990 Act which did not in fact apply in relation to the property before the coming into force of the scheme in question would have had to be satisfied (if the interest had been so confined) for the Capital Allowances Acts to apply in relation to that property as they did in fact apply before that time,
- those Acts and the preceding provisions of this Part of this Schedule shall have effect as if those requirements had been satisfied.
- (4) Where—

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- (a) any interest or right of any person in or in relation to any property is under sub-paragraph (2) above to be treated as having always been confined to an interest under a lease (within the meaning of section 61 of the 1990 Act) of that property,
- (b) that property is machinery or plant which is not so installed or otherwise fixed in or to a building or any other description of land as to become, in law, a part of that building or land, and
- (c) the restructuring scheme in accordance with which the relevant transfer relating to the machinery or plant is made provides for this sub-paragraph to apply in relation to that property,

the Capital Allowances Acts and the preceding provisions of this Part of this Schedule shall have effect (with the provisions of sub-paragraph (2) above so far as they apply to the lease) as if the capital expenditure on the provision of that machinery or plant was expenditure on machinery or plant which that person was required to provide under the terms of the lease.

- (5) Where sub-paragraph (2) above is not applied in relation to the relevant property, paragraph 5 above shall not apply but the capital allowances which shall be taken into account in pursuance of section 41 of the 1992 Act (restriction of losses by reference to capital allowances) on—
  - (a) the disposal by the transferee of the transferred property or any part of it, or
  - (b) the disposal by the predecessor of the retained property or any part of it,
 shall include, so far as not already taken into account under that section or this sub-paragraph, any capital allowances (within the meaning of that section) which have been made or fall to be made to the predecessor in relation to the relevant property.
- (6) In determining for the purposes of sub-paragraph (5) above whether or the extent to which any amount has been taken into account in pursuance of section 41 of the 1992 Act or that sub-paragraph, an amount so taken into account for the purpose of restricting any loss shall be assumed to be taken into account at the time when the loss accrues.

*Capital allowances for machinery and plant: connected persons*

- 22 For the purposes of Part II of the 1990 Act references in that Part to a transaction (however described) between connected persons within the meaning of section 839 of the 1988 Act shall not include references to any relevant transfer.

*Exchange gains and losses*

- 23 (1) This paragraph shall apply where—
  - (a) in consequence of so much of any relevant transfer as relates to any qualifying asset, qualifying liability or currency contract, any accrual period ends, as regards that asset, liability or contract, with the time immediately before the coming into force of the transfer; and
  - (b) that time would not be a translation time apart from the transfer.
- (2) For the purposes of Chapter II of Part II of the <sup>M120</sup>Finance Act 1993 (exchange gains and losses) the exchange rate to be used in finding the local currency equivalent at the translation time mentioned in sub-paragraph (1) above of—

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- (a) the basic valuation of an asset or liability,
- (b) the nominal amount of a debt outstanding, or
- (c) an amount of currency,

shall (subject to sub-paragraph (3) below) be the same as that used at the translation time with which the accrual period so mentioned began.

- (3) Where the accrual period mentioned in sub-paragraph (1) above is one in relation to which section 127 of the Finance Act 1993 (accrual on debts whose amounts vary) applies, that section shall have effect as if the local currency equivalent, at the translation time with which that period ends, of the nominal amount of the debt then outstanding were an amount equal to the first amount (within the meaning of that section).
- (4) For the purposes mentioned in sub-paragraph (2) above, where the preceding provisions of this paragraph apply for finding the local currency equivalent of any valuation or amount at the time immediately before the coming into force of a relevant transfer, the equivalent found in accordance with those provisions shall also be deemed to be the local currency equivalent of that valuation or amount at the translation time which, in consequence of the transfer, falls immediately after the transfer comes into force.
- (5) This paragraph shall be construed as one with Chapter II of Part II of the <sup>M121</sup>Finance Act 1993.

#### **Marginal Citations**

**M120** 1993 c. 34.

**M121** 1993 c. 34.

#### *Transfers of property in coal and lease back etc.*

- 24 (1) Subject to the following provisions of this paragraph—
- (a) this Part of this Schedule shall have effect as if the transfer made by section 7(3) of this Act were made in accordance with a restructuring scheme coming into force on the restructuring date; and
  - (b) any provisions of this Part of this Schedule by virtue of which provision may be contained in the restructuring scheme in accordance with which a relevant transfer is made shall have effect, in relation to the transfer made by section 7(3) of this Act, as if they authorised the inclusion of that provision in any restructuring scheme which is to take effect on the restructuring date.
- (2) Subject to sub-paragraph (3) below, where any interests or rights are created, in accordance with any restructuring scheme, in or in relation to any property which—
- (a) is property to which section 7(3) of this Act applies,
  - (b) is retained, subject to those interests and rights, by the Corporation or any of its wholly-owned subsidiaries, or
  - (c) in accordance with a restructuring scheme is transferred, with effect from the time at or immediately before which the creation of the interests or rights takes effect, from the Corporation or one of its wholly-owned subsidiaries to any other person,

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those interests or rights, so far as they are created in favour of a public sector body shall be treated for the purposes of the Corporation Tax Acts and this Part of this Schedule as transferred from the Corporation or, as the case may be, its subsidiary to that body but not, except for the purposes of paragraphs 2, 4, 10, 15 and 18(1) above, as transferred by virtue of a relevant transfer.

- (3) Sub-paragraph (2) above shall not apply in relation to the creation in favour of the Corporation or any of its wholly-owned subsidiaries, in accordance with any restructuring scheme, of any interest or right in or in relation to—
- (a) property to which section 7(3) of this Act applies; or
  - (b) any other property in or in relation to which the Corporation or, as the case may be, that subsidiary owned some other interest or right immediately before the created interest or right comes into existence.
- (4) Where any restructuring scheme contains provision for the creation in favour of the Corporation or any of its wholly-owned subsidiaries of any interest or right in or in relation to any such property as is mentioned in sub-paragraph (3)(a) or (b) above, the only transfer which shall be deemed for the purposes of the Corporation Tax Acts and this Part of this Schedule to have taken place in accordance with that provision shall be a transfer (subject to the retention of the created interest or right) from the Corporation or that subsidiary of—
- (a) any interest or right in or in relation to that property which, by virtue of that scheme, is to be retained by the Authority; and
  - (b) the interest or right in or in relation to that property which in accordance with the scheme is transferred to any other person, together with any interest or right which in accordance with that scheme is created in favour of another person.
- (5) Where—
- (a) any interest or right is created in accordance with a restructuring scheme in or in relation to any property which has vested in any person (“the intermediary”) by virtue of a relevant transfer,
  - (b) the intermediary and the person in favour of whom the right or interest is created are both public-sector bodies at the time when the interest or right is created, and
  - (c) neither sub-paragraph (2) nor sub-paragraph (4) above applies to the creation of that interest or right,

the creation of that interest or right shall be treated for the purposes of the Corporation Tax Acts and this Schedule as a transfer in accordance with a restructuring scheme of the interest or right from the intermediary to the person in favour of whom it is created but not, except for the purposes of paragraphs 2, 4, 10, 15 and 18(1) above and this sub-paragraph, as a relevant transfer.

- (6) Where paragraph 10 above applies in the case of any transaction which by virtue of sub-paragraph (5) above is treated for the purposes of that paragraph as a relevant transfer, that paragraph shall have effect in relation to that transaction as if references to the predecessor were references to the person who is the predecessor in relation to the relevant transfer by virtue of which the property in question vested in the intermediary or, where there has been more than one such transaction, the person who by virtue of this sub-paragraph is deemed for the purposes of that paragraph to be the predecessor in the case of the earliest such transaction.

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- (7) The creation in accordance with a restructuring scheme of any interest or right in any property in which different interests or rights subsist shall not be treated for the purposes of this Schedule as a transfer in accordance with that scheme of the created interest or right except so far as it falls to be so treated by virtue of the preceding provisions of this paragraph.
- (8) Subsections (1) and (2) of section 779 of the 1988 Act (sale and lease back) shall not apply where the liability of the transferor (within the meaning of that section) or of the person associated with that transferor is as a result of either—
- (a) the creation in accordance with any restructuring scheme of any interest or right; or
  - (b) any other transaction or series of transactions for which such a scheme provides.
- (9) Section 28 of the 1992 Act and paragraph 2(2) above shall apply for determining for the purposes of this paragraph the time as from which the creation of any interest or right takes effect as they apply for the purpose of determining the time of the disposal and acquisition of any asset.

#### *Modifications of restructuring scheme*

- 25 Where the effect of any restructuring scheme is modified in pursuance of any agreement which takes effect under paragraph 6(2) of Schedule 2 to this Act, the Corporation Tax Acts and this Part of this Schedule shall have effect as if—
- (a) the scheme originally made had been the scheme as modified; and
  - (b) anything done by or in relation to the person who without the modification became entitled or subject in accordance with the scheme to any property, rights or liabilities had, so far as relating to the property, rights or liabilities to which another person becomes entitled or subject in consequence of the modification, been done by or in relation to that other person.

## **PART II**

### **STAMP DUTY AND STAMP DUTY RESERVE TAX**

#### *Transactions attracting exemptions*

- 26 For the purposes of this Part of this Schedule a transaction is an exempt transaction if it is a transaction by virtue of which property, rights or liabilities are vested by or under Part I of this Act in a person who is a public-sector body within the meaning of Part I of this Schedule.

#### *Stamp duty*

- 27 (1) Subject to sub-paragraph (2) below, an exempt transaction shall not give rise to any charge to stamp duty except in so far as the charge to duty is on an instrument under this Act which is neither a restructuring scheme nor an instrument that has been certified to the Commissioners of Inland Revenue by the Secretary of State to have been made—
- (a) in pursuance of a restructuring scheme; or

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- (b) by virtue of any provision of this Act, for the purpose of modifying the effect of such a scheme.
- (2) No instrument which is certified as mentioned in sub-paragraph (1) above shall be taken to be duly stamped unless—
  - (a) it is stamped with the duty to which it would, but for that sub-paragraph, be liable; or
  - (b) it has, in accordance with section 12 of the <sup>M122</sup>Stamp Act 1891, been stamped with a particular stamp denoting that it is not chargeable with that duty or that it is duly stamped.
- (3) Stamp duty shall not be chargeable on any instrument by which the Treasury or the Secretary of State, or any nominee of the Treasury or the Secretary of State, transfers securities of a company to another company if—
  - (a) at least one of those companies is a successor company; and
  - (b) each of the companies is wholly owned by the Crown at the time when the instrument is made.

#### Marginal Citations

M122 1891 c. 39.

#### *Stamp duty reserve tax*

- 28 (1) No agreement for the purposes of, or for purposes connected with giving effect to—
- (a) so much of any restructuring scheme as relates to an exempt transaction, or
  - (b) any exempt transaction to which effect is given by the modification of any restructuring scheme,
- shall give rise to a charge to stamp duty reserve tax.
- (2) No agreement by which the Treasury or the Secretary of State, or any nominee of the Treasury or the Secretary of State, agrees to transfer securities of a company to another company shall give rise to a charge to stamp duty reserve tax if—
- (a) at least one of those companies is a successor company; and
  - (b) each of the companies is wholly owned by the Crown at the time when the instrument is made.

## SCHEDULE 5

Section 22.

### PENSIONS PROVISION IN CONNECTION WITH RESTRUCTURING

#### *Interpretation of Schedule*

- 1 (1) In this Schedule—
- “assets”, in relation to any existing scheme, means all the assets for the time being held for the purposes of the scheme by the trustees of the scheme, including every interest in property and right to which the trustees of the scheme are for the time being entitled, together with any liabilities, not being

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liabilities in respect of pension obligations, to which any entitlement of the trustees to any of the scheme's assets is subject;

“existing scheme” means any scheme having effect by virtue of regulations made under section 37 of the 1946 Act for purposes relating to pensions, gratuities or other like benefits;

“pension”, in relation to any person, means a pension of any kind payable to or in respect of that person, including—

- (a) a lump sum, allowance or gratuity so payable; and
- (b) a return of contributions, with or without interest or any other addition;

“pension obligation” means any present, future or contingent obligation to make a payment which is an obligation to which pension rights of the person to whom it is owed give rise;

“pension rights”, in relation to any person, includes all forms of right to or eligibility for the present or future payment of a pension to or in respect of that person and any right of allocation in respect of the present or future payment of a pension;

“prescribed” means prescribed by regulations made by the Secretary of State;

“the relevant enactments” means Chapter I of Part XIV of the <sup>M123</sup>Income and Corporation Taxes Act 1988 (retirement benefit schemes) and Part III of the <sup>M124</sup>Pension Schemes Act 1993 (so far as relating to occupational pension schemes within the meaning of that Act).

- (2) References in this Schedule to a scheme being approved for the purposes of Part III of the <sup>M125</sup>Pension Schemes Act 1993 are references to its being included in a contracting-out certificate having effect for the purposes of that Part of that Act.

#### Marginal Citations

**M123** 1988 c. 1.

**M124** 1993 c. 48.

**M125** 1993 c. 48.

#### *Modification of existing schemes*

- 2 (1) The Secretary of State may by regulations make provision in relation to an existing scheme for it to continue in force notwithstanding the repeal by this Act of section 37 of the 1946 Act and of the enactments modifying that section.
- (2) Without prejudice to any powers conferred (so long as it remains in force) by section 37 of the 1946 Act, the Secretary of State may by regulations make such provision as he considers appropriate in connection with the provisions of this Act for modifying any existing scheme.
- (3) Without prejudice to the generality of the power conferred by sub-paragraph (2) above, the modifications of an existing scheme that may be made by regulations under this paragraph shall include modifications for any of the following purposes, that is to say—
  - (a) for conferring power on the Secretary of State or any other prescribed person to appoint trustees of the existing scheme or for requiring trustees

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- to be appointed only in such manner and in such circumstances, or with the approval of the Secretary of State or such other person, as may be prescribed;
- (b) for enabling a person who is entitled to appoint trustees of the existing scheme to remove trustees of the scheme from office;
  - (c) for requiring or enabling powers or duties of any person under the existing scheme to be exercisable or performed by or in accordance with the directions of such persons or in such circumstances, or to be exercisable or performed only in such manner or with the consent of such persons, as may be prescribed;
  - (d) for providing that persons who have become entitled in respect of any period of employment to be participants in another prescribed scheme are not, as from such time as may be determined in accordance with the regulations, to be entitled in respect of that period of employment to be participants in the existing scheme;
  - (e) for facilitating the transfer in prescribed circumstances to another scheme of—
    - (i) rights and liabilities under the existing scheme of any participant in the existing scheme who becomes a participant in the other scheme; or
    - (ii) the benefit of any arrangements under which participants in the existing scheme are relieved from any obligation to make contributions;
  - (f) for the apportionment and allocation to particular rights and liabilities of assets of the existing scheme and for the transfer of assets to other schemes in connection with any provision made by virtue of this Schedule;
  - (g) for restricting the persons who are to be able on and after the restructuring date to become participants in the existing scheme;
  - (h) for enabling expenses incurred in or in connection with the management or other administration of the existing scheme to be met out of the assets of the scheme;
  - (i) for securing that the existing scheme continues to be approved for the purposes of the relevant enactments;
  - (j) for enabling the existing scheme to be wound up (in whole or in part) in such circumstances as may be prescribed.
- (4) The modifications of an existing scheme that may be made by regulations under this paragraph shall include modifications making such provision as the Secretary of State considers appropriate for cases where either—
- (a) there are assets of the scheme representing a relevant surplus, or
  - (b) the assets of the scheme are insufficient for meeting pension obligations under the scheme.
- (5) The modifications mentioned in sub-paragraph (4) above may contain—
- (a) provision for a relevant surplus, and the assets representing it, to be apportioned between—
    - (i) the part (if any) of the surplus which is to be retained in a reserve (“an investment reserve”) as an asset of the scheme, and
    - (ii) the remainder (“the distributable part”) of the surplus;
  - (b) provision for the management of assets representing an investment reserve and for the manner in which any such assets are to be applied;



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- (c) provision for income accruing in respect of assets representing an investment reserve to be added to the reserve;
  - (d) provision for the manner in which assets representing the distributable part of a relevant surplus are to be applied; and
  - (e) provision, for the purposes of any provision under paragraphs (a) to (d) above, for modifying any decisions as to the way in which relevant surpluses determined as at times before the restructuring date, and the assets representing any such surpluses, are to be treated.
- (6) The provision as to the apportionment of any surplus or assets to an investment reserve that may be contained in modifications made by virtue of sub-paragraph (4) above shall not include any provision authorising the allocation to such a reserve of any part of a surplus determined as at a time after 31st March 1994, or of any assets representing any part of such a surplus, except where the allocation is made for making good amounts which (apart from any entitlement for which provision is made by virtue of sub-paragraph (7) below) would have been comprised in the value of the reserve if assets representing any part of it had not been applied from the reserve in meeting a deficiency that arose as at any time by reason of the other assets of the scheme having been insufficient as at that time for meeting pension obligations under the scheme.
- (7) The provision as to the application of assets representing an investment reserve that may be contained in modifications made by virtue of sub-paragraph (4) above shall include provision for the Secretary of State to become entitled where—
- (a) any such arrangements as are mentioned in sub-paragraph (9) below have been entered into in relation to pension obligations under the scheme in question, and
  - (b) the value of the assets representing the reserve exceeds the aggregate amount required for the purposes for which the reserve has been retained,
- to assets of the scheme representing the amount of the excess or, where those purposes have ceased, the value of the reserve.
- (8) The provision as to the application of assets representing the distributable part of a relevant surplus that may be contained in modifications made by virtue of sub-paragraph (4) above shall include provision for the Secretary of State to become entitled where—
- (a) the surplus is one determined as at a time on or after 31st March 1994, and
  - (b) any such arrangements as are mentioned in sub-paragraph (9) below have been entered into in relation to pension obligations under the scheme in question,
- to assets of the scheme representing no more than one half of the distributable part of that surplus.
- (9) The Secretary of State may, with the consent of the Treasury, enter into such arrangements as he may consider appropriate for guaranteeing or otherwise securing, in relation to any existing scheme, that the assets of the scheme are at all times sufficient for meeting the principal pension obligations and such other pension obligations under the scheme as are obligations to which he considers such arrangements should apply.
- (10) Sums required by the Secretary of State for making any payment in pursuance of any arrangements entered into by him under sub-paragraph (9) above shall be paid out

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of money provided by Parliament; and any sums received by him by virtue of sub-paragraph (7) or (8) above shall be paid into the Consolidated Fund.

- (11) Regulations under this paragraph may provide for—
- (a) any such apportionments or allocations as are mentioned in the preceding sub-paragraphs,
  - (b) any determination for the purposes of any existing scheme of the amount of, or of any part of, any surplus or excess or of the assets for the time being to be treated as representing the whole or any part of any such surplus or excess, and
  - (c) the determination of any other matter falling to be determined for the purposes of any provision relating, in the case of any such scheme, to the management or application of the assets representing any reserve or surplus,
- to be made as at such times, on such basis and by reference to the opinion of such persons as may be prescribed.
- (12) The power by regulations under this paragraph to modify an existing scheme shall not authorise the making of any modification which, in relation to the person entitled to it, adversely affects so much of any pension right as gives rise to any of the principal pension obligations under that scheme.
- (13) Before making any regulations under this paragraph in relation to an existing scheme the Secretary of State shall consult with the Corporation and the trustees for the time being of that scheme.
- (14) The power to make regulations under this paragraph shall not be exercisable at any time after the end of the period of two years beginning with the restructuring date; but this sub-paragraph shall be without prejudice to any regulations made before the end of that period or to anything done (whether before or after the end of that period) under any regulations so made.
- (15) In this paragraph “relevant surplus”, in relation to an existing scheme, means any surplus determined as at any time on or after 31st March 1992 of the assets of the scheme over the amounts required, as at that time, for meeting the obligations which (apart from the surplus) either have arisen or may arise as pension obligations under the scheme.
- (16) In this paragraph references to the principal pension obligations under an existing scheme are references to the following, that is to say—
- (a) so much of any pension obligation arising under the scheme as derives neither from modifications of the scheme made on or after the restructuring date nor from any relevant surplus;
  - (b) so much of any pension obligation arising under the scheme as represents the effect on any pension right giving rise to a pension obligation falling within paragraph (a) above of any decision before 1st September 1994 to appropriate any of a relevant surplus determined as at a time before 31st March 1994 to the payment of increases in any pensions payable in pursuance of that right; and
  - (c) so much of any pension obligation arising under the scheme as represents the effect on any pension right giving rise to a pension obligation falling within paragraph (a) or (b) above of any provisions of the scheme, as modified on or after the restructuring date, which require that right to be varied from time to time by reference to fluctuations in any level of prices in Great Britain.

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*Replacement schemes for employees transferred to the private sector etc.*

- 3 (1) The Secretary of State may by regulations make such provision as he thinks fit for securing that arrangements are made and implemented in relation to any existing scheme for enabling participants in that scheme to become participants in another pension scheme (“a new scheme”) which—
- (a) is established, under and in accordance with the regulations, by the Corporation or such other person as may be prescribed; and
  - (b) satisfies the statutory requirements by reference to that existing scheme.
- (2) Where at any time the employment of any participant in any existing scheme in relation to which a new scheme has been established in pursuance of regulations under this Schedule is affected—
- (a) by the coming into force of any provisions of a restructuring scheme in accordance with which a person other than the Authority becomes his employer in place of the Corporation or one of its wholly-owned subsidiaries, or
  - (b) by a company’s having ceased at any time on or after the restructuring date to be a subsidiary of the Corporation,
- the duty specified in sub-paragraph (3) below shall arise and be owed to the participant and to every person who at that time is a participant in that existing scheme in respect of his continuing employment with a person other than the Corporation or a subsidiary of the Corporation.
- (3) That duty is a duty to secure that the person to whom the duty is owed is afforded, and is entitled to exercise, an option of becoming a participant in the new scheme in respect of the employment to which he is transferred or, as the case may be, in respect of his continuation, after the time when the duty arises, in the employment in respect of which he is at that time participating in the existing scheme.
- (4) The duty owed to any person under sub-paragraphs (2) and (3) above shall be owed—
- (a) in a case where it is owed to a person who is transferred in accordance with a restructuring scheme from the employment of one person to the employment of another, by the person to whose employment he is transferred; and
  - (b) in any other case, by the person who, in relation to the employment to which the duty relates, is the employer of the person to whom the duty is owed.
- (5) For the purposes of this paragraph, where a company has ceased to be a subsidiary of the Corporation, the persons whose employment shall be treated as affected by the company’s having ceased to be such a subsidiary shall be (and shall be confined to) the persons employed by that company at whichever is the later of the following times, that is to say—
- (a) the time when the company ceased to be a subsidiary of the Corporation; and
  - (b) the time when the company would so cease if any shares in the company which have at any time been transferred (whether in accordance with a restructuring scheme or otherwise) to any of the following persons, that is to say—
    - (i) the Treasury,
    - (ii) the Secretary of State,
    - (iii) a company wholly owned by the Crown, or
    - (iv) any nominee of the Treasury, the Secretary of State or a company wholly owned by the Crown,

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remained vested in the Corporation for so long after their transfer as they remain vested in any of the persons mentioned in sub-paragraphs (i) to (iv) above;

and a person whose employment is affected by a company's having ceased to be a subsidiary of the Corporation shall be treated for the purposes of this paragraph as so affected only at whichever of the times mentioned in paragraphs (a) and (b) above is applicable in his case.

- (6) For the purposes of this paragraph a new scheme satisfies the statutory requirements by reference to an existing scheme ("the previous scheme") if it contains all such provision as may be prescribed for the purposes specified in sub-paragraph (7) below, together with such other provision as may be prescribed.
- (7) The purposes mentioned in sub-paragraph (6) above are the purposes of securing—
- (a) that no person is able to participate in the new scheme as an employee unless he is a person falling within sub-paragraph (8) below;
  - (b) that the new scheme is and continues to be approved for the purposes of the relevant enactments;
  - (c) that the new scheme provides benefits to and in respect of participants in the new scheme which are no less advantageous than the benefits falling to be provided under the previous scheme as at the time immediately before the restructuring date; and
  - (d) that the pension rights under the previous scheme of any person who becomes a participant in the new scheme in respect of any employment are capable, at that person's option, of being transferred so as to become rights under the new scheme.
- (8) A person falls within this sub-paragraph if he is—
- (a) one of the persons who by virtue of sub-paragraph (2) above is to be afforded the option of becoming a participant in the new scheme;
  - (b) a person the duties of whose employment with the same employer have changed so that he has ceased to be eligible to participate in a scheme in relation to which he has been entitled to protection under paragraph 4 below but has become a person who satisfies, by reference to his new duties, a condition of eligibility for participation in the new scheme; or
  - (c) a person with pension rights as a result of having been a participant in an existing scheme who, at any time on or after the restructuring date, enters the employment of a person any of whose employees are already, in respect of their employment with that person, participants in the new scheme.
- (9) Regulations under this paragraph prescribing the provision that must be contained in a scheme for it to satisfy the statutory requirements may provide for that provision to be determined by reference to such directions and certificates of the Secretary of State as may be given or issued to such persons, in such cases and in such manner as may be prescribed.

*Protection for rights under private sector schemes*

- 4 (1) This paragraph applies to—
- (a) any scheme established in pursuance of regulations under paragraph 3(1) above; and

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- (b) any prescribed scheme the establishment of which appears to the Secretary of State to be, or to have been required, for the purposes of any protection to which any person is entitled by virtue of this paragraph.
- (2) The Secretary of State may by regulations impose such restrictions and obligations as appear to him to be appropriate for the purpose of securing—
- (a) that no person entitled to protection in relation to a scheme to which this paragraph applies is placed in any worse position by reason of—
    - (i) any such amendment of the scheme as is made otherwise than in prescribed circumstances and results in benefits under the scheme being reduced, or contributions by employees being increased; or
    - (ii) any winding-up, in whole or in part, of the scheme;
  - (b) that no person entitled to protection in relation to a scheme to which this paragraph applies is prevented from continuing to participate in or acquire pension rights under the scheme by reason of any change of employer which does not affect his continuity of employment; and
  - (c) that no person entitled to protection in relation to a scheme to which this paragraph applies is prevented (in a case not falling within paragraph (b) above) from continuing to participate in or acquire pension rights under the scheme by reason of his having entered the employment of an employer who—
    - (i) opts to allow that person to continue, in respect of his employment with that employer, as a participant in that scheme; and
    - (ii) is able to exercise that option without the scheme ceasing to be approved for the purposes of the relevant enactments.
- (3) Regulations under this paragraph may make provision for securing that a person entitled to protection in relation to a scheme to which this paragraph applies who—
- (a) ceases, by reason of any change in the duties of his employment with the same employer, to be eligible to participate in that scheme, but
  - (b) by reason of the change becomes a person who satisfies, by reference to his new duties, a condition of eligibility for participation in another such scheme,
- is afforded the equivalent protection with respect to his participation in the other scheme as was previously secured, by virtue of this paragraph, with respect to his continuing participation in the scheme for which he has ceased to be eligible.
- (4) Regulations under this paragraph may make provision for securing that individuals with pension rights under a scheme to which this paragraph applies are allowed to become participants in another such scheme or to renew their participation in the same scheme where, in prescribed cases, they enter the employment of a person any of whose employees are already, in respect of their employment with that person, participants in the other scheme or, as the case may be, in the scheme under which those rights subsist.
- (5) Regulations under this paragraph may—
- (a) impose duties (whether as to the provision or amendment of any scheme to which this paragraph applies, the purchase of annuities, the making of payments or otherwise) on—
    - (i) any person who has been or is for the time being the employer of a person entitled to protection in relation to any such scheme; and

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- (ii) any persons by whom such an employer is or has been wholly owned;
  - and
  - (b) provide for the duties imposed by the regulations on any person to be owed to such persons as may be prescribed, including persons other than the persons who are or have been employed by that person or, as the case may be, by a company wholly owned by him.
- (6) The following persons shall be entitled to protection in relation to any scheme to which this paragraph applies, except in so far as they cease to be so entitled under any of sub-paragraphs (7) to (9) below, that is to say—
- (a) every person who—
    - (i) has exercised an option conferred by virtue of paragraph 3(2) above to become a participant in the scheme in respect of his employment;
    - or
    - (ii) is or has been a participant in the scheme in pursuance of any regulations made under this paragraph for the purpose of preserving the entitlement of that person to protection in relation to any other scheme to which this paragraph applies;
  - and
  - (b) every person who has pension rights under the scheme in consequence of the death of a person falling within paragraph (a) above;
- but a person shall not be entitled to protection by virtue of paragraph (b) above except as respects the pension rights in respect of which he falls within that paragraph.
- (7) A person entitled to protection in relation to a scheme to which this paragraph applies may elect, in such manner as may be prescribed, that he is to cease to be entitled to that protection.
- (8) Subject to sub-paragraph (9) below, if—
- (a) any person entitled by virtue of sub-paragraph (6)(a) above to protection in relation to any scheme to which this paragraph applies ceases to be in continuous employment or voluntarily withdraws from that scheme, and
  - (b) the circumstances of that cesser or withdrawal are not such as may be prescribed,
- that person shall cease to be entitled to that protection except as respects pension rights which have accrued to him before the time when he so ceases or withdraws.
- (9) If any person entitled by virtue of sub-paragraph (6)(a) above to protection in relation to any scheme to which this paragraph applies continues to be a participant in that scheme after such a change of employment as brings the case within sub-paragraph (2)(c) above, that person shall cease to be entitled to that protection except as respects pension rights which have accrued to him before that change.
- (10) The reference in sub-paragraph (2) above to being placed in any worse position shall be construed, in relation to a person entitled to protection by virtue of sub-paragraph (6)(a) above who ceases, after the exercise of the option made available to him in pursuance of paragraph 3(2) above, to participate in or acquire pension rights under any scheme, as a reference to being placed in a position which is worse than his position immediately before he so ceases.

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- (11) [<sup>F2</sup>Chapter I of Part XIV of the Employment Rights Act 1996, except section 218(6)], shall apply for the purposes of this paragraph as if this paragraph were contained in that Act.
- (12) Regulations under this paragraph may provide that no account shall be taken for the purposes of this paragraph of any person's ceasing to be in continuous employment for such periods and in such circumstances as may be prescribed.
- (13) For the purposes of this paragraph a company is wholly owned by any person if its members do not include any person other than—
- (a) that person himself;
  - (b) companies wholly owned by that person; and
  - (c) persons acting on behalf of that person or a company wholly owned by that person.

#### Textual Amendments

**F2** Words in [Sch. 5 para. 4\(11\)](#) substituted (22.8.1996) by [1996 c. 18, ss. 240, 243, Sch. 1 para. 64](#).

#### *General provisions*

- 5 (1) Every power of the Secretary of State to make regulations under this Schedule shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (2) Any power of the Secretary of State to make provision by regulations under this Schedule shall include power—
- (a) to make different provision for different cases or different purposes; and
  - (b) to make such supplemental, incidental, consequential and transitional provision as the Secretary of State considers appropriate in relation to the provision contained in any such regulations.
- (3) The power conferred by sub-paragraph (2) above shall include—
- (a) power, for the purpose of giving effect to any option afforded by virtue of this Schedule, to provide for the modification of the contracts of employment of persons who become participants in a scheme established in pursuance of any such regulations; and
  - (b) power to require any dispute arising under or in relation to any regulations under this Schedule to be referred to such arbitration as may be prescribed.
- (4) Regulations under this Schedule may be made so as to have effect from a date prior to their making; but, in making any provision so to have effect, regulations under this Schedule shall not place any person other than—
- (a) the Secretary of State,
  - (b) the Authority,
  - (c) the Corporation or a wholly-owned subsidiary of the Corporation, or
  - (d) a company wholly owned by the Crown,
- in a worse position than he or it would have been in if the regulations had been made so as to have effect only from the date of their making.

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- (5) Where any modification by virtue of this Schedule of any existing scheme confers any powers on the Secretary of State, those powers shall be treated as conferred for purposes that include securing that trustees and other persons concerned in the administration of the scheme exercise and perform their powers and duties in such manner as appears to the Secretary of State to take account, to the extent that he thinks appropriate, of the desirability—
- (a) of preventing the Secretary of State from incurring any liability under arrangements entered into as mentioned in paragraph 2(9) above;
  - (b) of keeping to a minimum the amount of any liability that is incurred under any such arrangements; and
  - (c) of managing the scheme so as to produce the largest practicable surpluses at the times as at which determinations of any relevant surpluses (within the meaning of paragraph 2 above) fall to be made.
- (6) Nothing in any enactment or rule of law shall prevent the Corporation, the trustees of any existing scheme, or any other person concerned in the administration of any such scheme, from giving the Secretary of State or such other person as may be prescribed all such advice or assistance as he may reasonably require for the purposes of making any determination, apportionment, allocation or transfer, or giving or issuing any direction or certificate, for which provision is made by or under this Schedule.

## SCHEDULE 6

Section 43.

### FURTHER MODIFICATIONS OF THE 1991 ACT

- 1 (1) Where—
- (a) a damage notice is received by a person with responsibility for subsidence affecting any land, and
  - (b) that person is neither the Authority nor the person who is or would be the responsible person in relation to the damage with respect to which the notice is given,
- the person who has received the notice shall, as soon as reasonably practicable after receiving it, forward the notice to the Authority.
- (2) Where—
- (a) a damage notice is received by the Authority (whether as a result of being forwarded under sub-paragraph (1) above or otherwise), and
  - (b) the Authority is not itself the person who is or would be the responsible person in relation to the damage with respect to which the notice is given,
- the Authority shall, as soon as reasonably practicable after receiving it, forward the notice to the person appearing to the Authority to be the person who is or would be the responsible person in relation to that damage.
- (3) The person to whom a notice is forwarded under this paragraph shall be deemed for the purposes of the 1991 Act—
- (a) to have been given that notice by the person whose notice it is; and
  - (b) to have received the notice within the period allowed by section 3 of the 1991 Act if it was or is deemed to have been so received by the person who forwarded it.



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- (4) In this paragraph “damage notice” has the same meaning as in the 1991 Act.
- 2 Section 8(9) of the 1991 Act (grounds for refusing request for purposes connected with the execution of works by another) shall have effect in relation to times on and after the restructuring date with the substitution for the reference to a remedial obligation of the Corporation in respect of any one or more neighbouring properties of a reference to the remedial obligation, in respect of any one or more such properties, of the responsible person or of any other person with responsibility for subsidence affecting land.
- 3 (1) In relation to times on or after the restructuring date, sections 10(2)(c), 16(1)(b) and (7)(a), 17(1)(a) and 33(1) of the 1991 Act (which make provision where certain matters appear to the Corporation) shall have effect, in each case, with the omission of the words “to the Corporation”.
- (2) Accordingly, section 16 of that Act shall have effect in relation to such times—
- (a) with the substitution, in subsection (1), for “it appears to them as mentioned in paragraph (b) above” of “the condition mentioned in paragraph (b) above is satisfied”; and
- (b) with the omission, in subsection (7)(b), of the words “to them”, wherever occurring.
- 4 The reference in section 15 of the 1991 Act (recipients of depreciation payments) to another person who is liable to make good any damage shall not, in relation to any responsible person, include any person who is liable to make good that damage by virtue only of being jointly and severally liable with the responsible person in accordance with section 44(1) of this Act.
- 5 In relation to any regulations made on or after the restructuring date sections 25(1) and 29(1) of the 1991 Act shall each have effect with the substitution for the first reference to the Corporation (consultation as to regulations) of a reference to such persons with responsibility for subsidence affecting land as it appears to the Secretary of State to be appropriate to consult.
- 6 Section 43(1) of this Act shall require the second reference to the Corporation in section 29(1) of the 1991 Act and the references to the Corporation in sections 33(2) to (6) and 36 of that Act to be construed, in relation to subsidence damage of which there is a possibility or which appears likely to occur or might occur, as references to the person who would be the responsible person in relation to that damage if it did occur.
- 7 On and after the restructuring date sections 37, 38, 40 to 42 and 44(1) of the 1991 Act (which make general provision with respect to claims) shall have effect with the substitution for references to the Corporation, or to any of its licensees, of references to any person with responsibility for subsidence affecting any land.
- 8 On and after the restructuring date sections 46 and 47 of the 1991 Act (which require the giving of notice of certain operations) shall have effect in relation to any underground coal-mining operations as a result of which any land may be affected by subsidence—
- (a) with the substitution for references to the Corporation of references to the person who would be the responsible person in relation to any subsidence damage to that land if such damage were to result from the operations; and
- (b) as if anything done by the Corporation under that section before the restructuring date had been done by that person.

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- 9 The provisions of section 44 of this Act, so far as they relate to obligations, liabilities or rights of responsible persons, shall also apply as respects obligations, liabilities or rights by virtue of paragraph 6 or 8 above of persons who would be responsible persons if subsidence damage occurred; and, for that purpose, references in that section to subsidence damage shall be construed accordingly.
- 10 On and after the restructuring date, section 49 of the 1991 Act (which makes provision with respect to the making of reports by the Corporation) shall have effect with the substitution for references to the Corporation of references to the Authority; and, accordingly, any requirement imposed by that section on the Corporation shall have effect on and after that date as if imposed on the Authority.
- 11 Paragraph 1(1) of Schedule 2 to the 1991 Act (payment of depreciation where Corporation satisfied that the relevant interest was subject to a mortgage) shall have effect in relation to payments falling to be made on or after the restructuring date with the omission of the words “the Corporation are satisfied that”.
- 12 Section 43(1) of this Act shall not apply to the references to the Corporation in Schedule 7 to that Act (transitional provisions) so far as they have effect in relation to times before the restructuring date.

## 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—

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- (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.

#### *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.

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- (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.

*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.

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- (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 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.

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- (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 Lands 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 Lands Tribunal, by virtue of sub-paragraph (5) above, in respect of the costs of proceedings before the Tribunal.
- (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.

*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

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- (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 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,

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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>M126</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,
  - (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**

M126 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—



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- (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.
  - (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.

## SCHEDULE 8

Section 52.

### AMENDMENTS OF THE OPENCAST COAL ACT 1958

#### *Introduction*

1 The <sup>M127</sup>Opencast Coal Act 1958 shall be amended as follows.

#### **Marginal Citations**

M127 1958 c. 69.

#### *Power to make compulsory rights orders*

- 2 (1) In subsection (1) of section 4 (compulsory rights order)—
  - (a) for the words “the Corporation”, in each place where they occur, there shall be substituted “the Coal Authority”;
  - (b) for the words “compulsorily acquire” there shall be substituted “confer”;
  - and
  - (c) for the words “the whole or part of any land on which they desire” there shall be substituted “the whole, or such part as (subject to the confirmation of the Secretary of State) the Coal Authority thinks fit, of any land on which the applicant for the order desires”.
- (2) After that subsection there shall be inserted the following subsections—
  - “(1A) The Coal Authority shall not make a compulsory rights order except on the application of a person who satisfies that Authority—
    - (a) that he is either a licensed operator within the meaning of the Coal Industry Act 1994 or a person whose application to that Authority for a licence under Part II of that Act is pending; and

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- (b) that he has served notice in the prescribed form of the application for the order on every person who is known to him to be a person who would, in relation to the order applied for, be directly concerned.
- (1B) Subject to the provisions of section 5 of this Act, the rights conferred by an order made on such an application as is mentioned in subsection (1A) of this section shall be conferred on the applicant and his successors so as to be exercisable for the purposes only of—
- (a) operations which the applicant or, as the case may be, any such successor is authorised to carry out by virtue of being a licensed operator within the meaning of the Coal Industry Act 1994; and
  - (b) operations which are incidental to operations falling within paragraph (a) above (including operations carried out at times when the authorisation for the operations falling within that paragraph is not in force)."
- (3) In subsection (5) of that section (which has effect in relation to Scotland for applying enactments relating to compulsory purchase and giving effect to Part I of Schedule 2 to the Act), after the first "to the" there shall be inserted " Scottish "; and subsection (8) of that section shall cease to have effect.

#### *Effect of orders*

- 3 (1) In subsection (2) of section 5 (effect of order), for "The Corporation" there shall be substituted " The person on whose application the order has been made ".
- (2) In subsections (4) and (5) of that section—
- (a) for the words "the Corporation", in the first place where they occur in each subsection, there shall be substituted " the person entitled to the rights conferred by the order "; and
  - (b) for the words "the Corporation", in the second and third places where they occur in each subsection, there shall be substituted " that person ".
- (3) After subsection (5) of that section there shall be inserted the following subsections—
- "(5A) Subject to subsection (5B) of this section, the rights conferred by a compulsory rights order—
- (a) shall be exercisable by a successor of the original applicant for the order only where the Coal Authority has transferred to that successor the entitlement to exercise the rights conferred by the order; but
  - (b) where the Coal Authority has so transferred them, shall not, at any time after the transfer, be exercisable by any person in his capacity as the original applicant or as a previous successor of that applicant;
- and references in this Act to the person entitled to the rights conferred by a compulsory rights order are references to the person who is for the time being the person by whom those rights are exercisable in accordance with section 4(1B) of this Act and this section.
- (5B) Where at any time after an application for a compulsory rights order has been made and before any order made on that application is confirmed—
- (a) any person becomes the successor of the original applicant for the order and notifies that fact—

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(i) if no order has been made on the application, to the Coal Authority, or

(ii) if such an order has been made, to the Secretary of State,

and

(b) the Authority or, as the case may be, the Secretary of State decides to proceed in relation to the application or order in accordance with this subsection,

the provisions of this Act and of any enactment applied by this Act shall have effect as if the application had been made by that person, as if he had the same right to make it as the original applicant and as if anything done for the purposes of the application by or in relation to the original applicant or a previous successor had been done by or in relation to that person.

(5C) The Coal Authority or, as the case may be, the Secretary of State—

(a) shall make a transfer under subsection (5A) of this section by giving written notice of the transfer to each of the persons who, in consequence of the transfer, is to cease to be, or is to become, entitled to the rights conferred by the order;

(b) may by notice to the successor make any modifications of a compulsory rights order which are necessary in consequence only of the making of a transfer under subsection (5A) of this section; and

(c) may make a decision to proceed in accordance with subsection (5B) of this section subject to compliance by the successor giving the notification with such conditions as that Authority or the Secretary of State thinks fit.”

#### *Limitations on effect of orders*

4 In section 7 (rights not affected by order)—

(a) in subsection (2)(c)—

(i) for “authorisation” there shall be substituted “ opencast planning permission ”;

(ii) for “the Corporation have” there shall be substituted “ the person entitled to the rights conferred by the compulsory rights order has ”; and

(iii) for the words from “under” to “applied” there shall be substituted “ under the provisions of the Act of 1990, applied ”;

(b) in subsection (3)(a)—

(i) for “made by the Corporation and” there shall be substituted “ to which the person entitled to the rights conferred by the compulsory rights order is or is deemed to be a party and which is ”; and

(ii) for “the Corporation are” there shall be substituted “ that person is ”;

and

(c) for subsections (8) and (9) of that section there shall be substituted—

“(8) In this section—

“statutory water undertakers” means—

(i) in England and Wales, the National Rivers Authority, a water undertaker or a sewerage undertaker; and

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(ii) in Scotland, a water authority within the meaning of the Water (Scotland) Act 1980;

“local enactment”—

(i) in England and Wales, means any local statutory provision within the meaning of the Water Industry Act 1991; and

(ii) in Scotland, has the same meaning as in the Water (Scotland) Act 1980;

and, in the application of this section to Scotland, for any reference to the Act of 1990 there shall be substituted a reference to the Town and Country Planning (Scotland) Act 1972.”

*Limited compulsory rights orders*

5 In subsection (3)(b) of section 8 (modification of section 5(4))—

(a) for the words “the Corporation”, in the first and second places where they occur, there shall be substituted “ the person entitled to the rights conferred by the order ”; and

(b) for the words “the Corporation”, in the third place where they occur, there shall be substituted “ that person ”.

*Provisions as to other minerals, timber, crops, etc.*

6 In subsections (1) to (3) of section 10 (rights in relation to other minerals, timber, crops, etc.)

(a) for the words “the Corporation”, in the first and last places where they occur in each subsection, there shall be substituted “ the person entitled to the rights conferred by the order ”; and

(b) for the words “the Corporation”, wherever else they occur in each subsection, there shall be substituted “ that person ”.

*Registration of orders in Scotland*

7 In section 11(4) (registration in the register of sasines)—

(a) for the words “the Corporation”, in the first place where they occur, there shall be substituted “ the person on whose application it was made ”; and

(b) for the words “the Corporation”, in the second place where they occur, there shall be substituted “ the person entitled immediately before it ceases to have effect to the rights conferred by the order ”.

*Removal of chattels from land*

8 (1) In subsection (1) of section 12 (rights to remove chattels from land affected by compulsory rights order), for “the Corporation” there shall be substituted “ the person entitled to the rights conferred by the order ”.

(2) In subsection (2) of that section, for “the Corporation” there shall be substituted “ the person who served the notice ”.

(3) After that subsection there shall be inserted the following subsection—

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“(2A) Where the person who has served a notice under subsection (1) of this section ceases, without exercising any power under subsection (2) of this section, to be the person entitled to the rights under the compulsory rights order, that notice shall cease to have effect for the purposes of this section.”

(4) In subsection (3) of that section—

- (a) for “the Corporation cause” there shall be substituted “ any person causes ”;
- (b) for “the last preceding subsection” there shall be substituted “ subsection (2) of this section ”;
- (c) for the words “the Corporation”, in the second and third places where they occur, there shall be substituted “ that person ”; and
- (d) for the words “the Corporation”, in the fourth place where they occur, there shall be substituted “ the person who caused the chattel to be removed ”.

(5) In subsection (4) of that section, for the words “the Corporation”, in each place where they occur, there shall be substituted “ the person who makes the sale ”.

#### *Apparatus of statutory undertakers*

9 Section 13 (effect in relation to apparatus of statutory undertakers of opencast planning permission) shall cease to have effect.

#### *Agricultural tenancies in England and Wales*

10 In section 14(6) (arbitration under section 12 of the <sup>M128</sup>Agricultural Holdings Act 1986 in cases where opencast planning permission has been granted)—

- (a) for “the Corporation are” there shall be substituted “ the person with the benefit of the opencast planning permission is ”; and
- (b) for the words “the Corporation”, in the second place where they occur, there shall be substituted “ that person ”.

#### **Marginal Citations**

**M128** 1986 c. 5.

#### *Agricultural tenancies in Scotland*

11 (1) In subsection (6)(a) of section 14A (modification of section 22(2) of the <sup>M129</sup>Agricultural Holdings (Scotland) Act 1991), for “the British Coal Corporation” there shall be substituted “ a person who is a licensed operator within the meaning of the Coal Industry Act 1994 or whose application for a licence under Part II of that Act is pending ”.

(2) In subsection (8) of that section (arbitration under section 13 of that Act of 1991)—

- (a) for “the Corporation are” there shall be substituted “ the person with the benefit of the opencast planning permission is ”; and
- (b) for the words “the Corporation”, in the second place where they occur, there shall be substituted “ that person ”.

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### Marginal Citations

M129 1991 c. 55.

### *Suspension of rights of way*

- 12 (1) In subsection (1) of section 15 (orders for suspension of right of way)—
- (a) in paragraph (a), for “the Corporation apply” there shall be substituted “ any person applies ”; and
  - (b) in the words after paragraph (b), for “the Corporation may also apply to the Secretary of State” there shall be substituted “ that person may also apply to the Coal Authority ”.
- (2) In subsection (2) of that section—
- (a) for “Secretary of State shall not make such an order” there shall be substituted “ Coal Authority shall not make an order under this section ”;
  - (b) in paragraph (a), for “is granted” there shall be substituted “ has been applied for or granted ”; and
  - (c) in paragraph (b), for the words from the beginning to “the Corporation” there shall be substituted—
    - “(aa) it is satisfied that the applicant—
      - (i) is a licensed operator within the meaning of the Coal Industry Act 1994 or a person whose application to the Coal Authority for a licence under Part II of that Act is pending; and
      - (ii) has complied with the requirements of section 15A of this Act before submitting the application;
    - and
    - (b) it is also satisfied—
      - (i) that a suitable alternative way will be made available by the applicant”.
- (3) For subsection (3) of that section there shall be substituted the following subsections—
- “(3) An order under this section—
- (a) shall not have effect unless confirmed by the Secretary of State; and
  - (b) where it has been confirmed, shall have effect (with such modifications as the Secretary of State may in confirming it determine) so as to suspend the right of way to which it relates with effect (subject to section 15A(10) and (11) of this Act) from such date as may be determined by the Secretary of State and specified in the order as confirmed.
- (3A) Where at any time after an application for an order under this section has been made and before any order made on that application is confirmed—
- (a) any person becomes the successor of the original applicant for the order and notifies that fact—
    - (i) if no order has been made on the application, to the Coal Authority, or

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- (ii) if such an order has been made, to the Secretary of State,  
and
- (b) the Authority or, as the case may be, the Secretary of State decides to proceed in relation to the application or order in accordance with this subsection,  
the provisions of this Act shall have effect as if the application had been made by that person, as if he had the same right to make it as the original applicant and as if anything done for the purposes of the application by or in relation to the original applicant or a previous successor had been done by or in relation to that person.
- (3B) The Coal Authority or, as the case may be, the Secretary of State may make a decision to proceed in accordance with subsection (3A) of this section subject to compliance by the successor giving the notification with such conditions as that Authority or the Secretary of State thinks fit.”
- (4) In subsection (4) of that section, after paragraph (b) there shall be inserted “or
- (c) he is satisfied that it is appropriate to do so on account of any failure on the part of the person on whose application the order was made to comply with any of the requirements of section 15A(10) of this Act.”
- (5) In subsection (5) of that section, for the words from “include” to “to”, in the second place where it occurs, there shall be substituted “ not be made except where such conditions for the making of the order are imposed or such other provision is included in the order as may ”.
- (6) After subsection (5) there shall be inserted the following subsection—
- “(5A) For the purposes of subsection (5) above a local planning authority may enter into an agreement with any applicant for an order under this section as to the steps to be taken by that person or any of his successors for securing the reconstruction of the way in question; and such an agreement shall have effect, so far as it relates to steps to be taken by any successor of the applicant, as if that successor had been a party to it and was bound by it to the same extent as the applicant.”

*Supplementary provisions about suspension of rights of way*

- 13 (1) In subsection (1) of section 15A (supplementary provisions in relation to the suspension of rights of way)—
- (a) for the words from the beginning to the words “the Corporation”, in the first place where they occur, there shall be substituted—
- “(1) Before any person submits an application to the Coal Authority for an order under section 15 of this Act, that person”;
- (b) in paragraph (a), for “the Corporation are” there shall be substituted “ that person is ”;
- (c) after paragraph (a) there shall be inserted the following paragraph—
- “(aa) whether the applicant is proposing to make available any alternative way and, if he is, what the alternative is; and”;
- (d) paragraph (c) (notice to specify objection procedure) and the word “and” immediately preceding it shall be omitted.

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- (2) After that subsection there shall be inserted the following subsection—
- “(1A) As soon as reasonably practicable after making an order under section 15 of this Act the Coal Authority shall submit the order to the Secretary of State for confirmation and publish a notice in the prescribed form identifying the right of way in question and stating—
- (a) that the Coal Authority has made an order that will suspend the right of way in connection with the working of coal by opencast operations and has submitted the order for confirmation to the Secretary of State;
  - (b) whether the applicant for the order is to make any alternative way available and, if he is, what the alternative is;
  - (c) that opencast planning permission has been applied for or, as the case may be, granted; and
  - (d) that objections to the confirmation of the order may be made in writing to the Secretary of State within such time, not being less than 28 days from the publication of the notice, as may be specified.”
- (3) In subsection (2) of that section, after “subsection (1)” there shall be inserted “ or (1A) ”.
- (4) After subsection (2) of that section there shall be inserted the following subsection—
- “(2A) The Secretary of State shall not confirm an order under section 15 of this Act unless he thinks fit and—
- (a) he is satisfied that the notice required by subsection (1A) above has been published in relation to that order and that the requirements of subsection (5) below have been satisfied in relation to that notice;
  - (b) the period within which objections may be made in accordance with that notice has expired; and
  - (c) the opencast planning permission has been granted.”
- (5) In subsection (4) of that section—
- (a) after “subsection (1)” there shall be inserted “ or (1A) ”; and
  - (b) after “the application” there shall be inserted “ or, as the case may be, the order ”.
- (6) In subsection (5) of that section—
- (a) for the words from the beginning to “the Secretary of State” there shall be substituted—
 

“(5) Where any person is required under subsection (1) or (1A) above to publish any notice, he shall also—”;
  - (b) in paragraph (a), for the words from “of the right” onwards there shall be substituted (after sub-paragraph (ii))— “ of the submission of the application or, as the case may be, of the making of the order; ”
  - (c) in paragraph (b), for “their notice under subsection (1) above” there shall be substituted “ the notice under subsection (1) or (1A) above ”; and
  - (d) in paragraph (c), for the words from “their” onwards there shall be substituted “ the matters contained in the notice under subsection (1) or (1A) above. ”
- (7) Subsection (6) of that section shall cease to have effect.



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- (8) In subsection (7) of that section—
- (a) for “make” there shall be substituted “ confirm ”; and
  - (b) after “authority” there shall be inserted “ other than a parish or community council or parish meeting as is mentioned in subsection (5)(a) above ”.
- (9) In subsection (8) of that section, for “make” there shall be substituted “ confirm ”.
- (10) In subsection (9) of that section—
- (a) the word “Corporation’s” shall be omitted;
  - (b) for “the Secretary of State” there shall be substituted “ the Coal Authority ”; and
  - (c) at the end there shall be inserted “ ; and this subsection shall be without prejudice to the power of the Secretary of State, by virtue of subsection (3) of that section, to make further modifications when confirming the order. ”
- (11) In subsection (10) of that section—
- (a) for the words from the beginning to “publish” there shall be substituted—
    - “(10) A confirmed order under section 15A of this Act shall not have effect at any time before the person on whose application the confirmed order was made has published”;
  - (b) for “has been made” there shall be substituted “ has been confirmed ”;
  - (c) for “comes” there shall be substituted “ is to come ”; and
  - (d) for “shall serve a like notice and a copy of the order” there shall be substituted “ has served a like notice and a copy of the order and of such a map ”.
- (12) In subsection (11) of that section, for paragraphs (a) and (b) there shall be substituted “ in the manner specified in subsection (2) in relation to notices for the purposes of subsection (1) above; and an order that fails, by virtue of subsection (10) above, to come into operation on the date specified in the order shall come into operation on the date of the last publication required by virtue of this subsection. ”

*Orders conferring rights for drainage or water supply purposes*

- 14 (1) In subsections (1) and (2) of section 16 (orders for drainage and water supply purposes), for the words from “granted” to “compulsorily”, in each subsection, there shall be substituted “ applied for or granted, the Coal Authority, on an application in accordance with subsection (2A) below, may, by means of an order made by that Authority and confirmed by the Secretary of State, confer on the person with the benefit of the permission ”.
- (2) After subsection (2) of that section there shall be inserted the following subsection—
- “(2A) The Coal Authority shall not make an order under this section except on the application of a person who—
    - (a) is the person with the benefit of the opencast planning permission or, where the permission has been applied for but has not been granted, the person who will have the benefit of that permission;
    - (b) satisfies that Authority that he is either a licensed operator within the meaning of the Coal Industry Act 1994 or a person whose application to that Authority for a licence under Part II of that Act is pending; and

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- (c) also satisfies that Authority that he has served notice in the prescribed form of the application for the order on every owner, lessee and occupier of the other land (except tenants for a month or any period of less than a month);
- and an order made before the opencast planning permission has been granted shall not be confirmed until after it has been granted.”
- (3) In subsection (3) of that section—
- (a) for “authorising the compulsory purchase of” there shall be substituted “conferring”;
- (b) after “was” there shall be inserted “applied for or”; and
- (c) for “acquired” there shall be substituted “conferred”.
- (4) For subsection (4) of that section (effect of order), including that subsection as substituted for Scotland by subsection (9) of that section, there shall be substituted the following subsection—
- “(4) Any right conferred by an order under this section shall be exercisable by, or by any person authorised by—
- (a) a person who—
- (i) is for the time being in occupation of the land specified in accordance with subsection (3) of this section in the order;
- (ii) is the person on whom the right was conferred; and
- (iii) was in occupation of that land when it was conferred;
- or
- (b) a person who is for the time being in occupation of the land by virtue of the transfer to him either—
- (i) by, or with the written approval of, the Coal Authority, or
- (ii) in any other case described in the order,
- of any interest or right which, at the time when the right was conferred under this section, was vested in a person who became entitled to exercise it by virtue of paragraph (a) above;
- and a right conferred by an order under this section (whether or not conferred while the person on whom it was conferred was in occupation of the land) shall, in the case of land in England and Wales, be treated as an easement appurtenant in perpetuity to that land, and, in the case of land in Scotland, be recorded in the Register of Sasines or as the case may be registered in the Land Register of Scotland by the person on whom the right is conferred.”
- (5) In subsection (4A) of that section (which for England and Wales provides for the application of compulsory purchase legislation), for the words from the beginning to “as if” there shall be substituted—
- “(4A) For the purposes of any order conferring rights exercisable under this section on any land in England and Wales—
- (a) Parts II to IV of the Acquisition of Land Act 1981 shall apply as they would apply in relation to a compulsory rights order in which that land is comprised, and section 29 of that Act shall apply accordingly but with the omission of subsections (4) and (5); and
- (b) the Compulsory Purchase Act 1965 shall have effect as if—

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- (i) the conferring of those rights were the compulsory acquisition of those rights by the person on whom they are conferred; and
    - (ii)”.
      - (6) After subsection (4A) of that section there shall be inserted the following subsections—
        - “(4B) Where at any time after an application for an order under this section has been made and before any order made on that application is confirmed—
          - (a) any person becomes the successor of the original applicant for the order and notifies that fact—
            - (i) if no order has been made on the application, to the Coal Authority, or
            - (ii) if such an order has been made, to the Secretary of State,
          - and
          - (b) the Authority or, as the case may be, the Secretary of State decides to proceed in relation to the application or order in accordance with this subsection,
  - the provisions of this Act shall have effect as if the application had been made by that person, as if he had the same right to make it as the original applicant and as if anything done for the purposes of the application by or in relation to the original applicant or a previous successor had been done by or in relation to that person.
  - (4C) The Coal Authority or, as the case may be, the Secretary of State may make a decision to proceed in accordance with subsection (4B) of this section subject to compliance by the successor giving the notification with such conditions as that Authority or the Secretary of State thinks fit.”
- (7) For subsection (5) of that section there shall be substituted the following subsection—
  - “(5) In relation to any order conferring rights exercisable under this section as regards any land in Scotland Parts I, III and IV of Schedule 1 to the Scottish Acquisition of Land Act (and the enactments incorporated with that Act) shall apply as they would apply in relation to a compulsory rights order in which that land is comprised, and section 4(5) of this Act shall apply accordingly but as if the section did not relate to paragraphs 3 and 4 of Schedule 2 to this Act.”
- (8) In subsection (6) of that section, for “a compulsory purchase order made by virtue of” there shall be substituted “an order made and confirmed under”.
- (9) After subsection (7) of that section there shall be inserted the following subsection—
  - “(7A) Subsections (2) and (3) of section 12 of the Acquisition of Land Act 1981 (statutory tenants etc. and ecclesiastical property) shall have effect in relation to the service of a notice under this section as respects any land in England and Wales as they have effect in relation to the service of a notice under that section.”
- (10) Subsection (9) of that section shall cease to have effect.

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*Annual compensation*

- 15 (1) In subsection (1) of section 17 (general provisions as to annual compensation)—
- (a) the words “by the Corporation” shall be omitted; and
  - (b) in paragraph (b), after “falls” there shall be inserted “ wholly or partly ”.
- (2) After that subsection there shall be inserted the following subsection—
- “(1A) Subject (where different persons have been entitled to the rights for different parts of the year) to any apportionment under section 35(3) of this Act, the liability to pay compensation under this section shall fall on the persons who, for the whole or any part of the year in question, have been entitled to the rights conferred by the order.”
- (3) In subsection (2) of that section, for “in the Corporation” there shall be substituted “ in the Coal Authority or the person entitled to rights conferred by the order ”.
- (4) In subsection (3) of that section—
- (a) at the beginning there shall be inserted the words “ Subject to subsection (3A) of this section, ”; and
  - (b) the words “by the Corporation” shall be omitted.
- (5) After that subsection there shall be inserted the following subsections—
- “(3A) Where—
- (a) any compensation is payable for any year by virtue of this section in respect of any holding, and
  - (b) the amount of that compensation falls to be calculated in accordance with section 18 of this Act by reference to the market value of rights which, if the compulsory rights order were not in force, could not be conferred for that year or any part of it except by or with the consent of one or more persons who are included in the persons directly concerned but do not fall within subsection (3) of this section,
- the entitlement to that compensation shall be apportioned, according to the extent to which those rights could not be conferred for that year or part of a year without their participation or consent, between those persons and any person falling within that subsection.
- (3B) Subject to subsection (3C) of this section, the persons entitled under subsection (3A) of this section to a share of any compensation shall include persons whose participation in or consent to the conferring of any right would be required if the right were conferred at some time after the beginning of the year or part of a year in question; and any apportionment under subsection (3A) of this section shall take account of the length of the period for which any person is, during that year or part of a year, a person without whose participation or consent any right could not be conferred.
- (3C) No person shall be entitled under subsection (3A) of this section to any share of any compensation in respect of any such easement or right as might give rise to an entitlement to compensation under section 31 of this Act.”
- (6) Subsection (4) of that section shall cease to have effect.
- (7) Sub-paragraphs (5) and (6) above shall not apply in relation to any compulsory rights order confirmed before the restructuring date.

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### *Calculation of compensation*

16 In relation to any compulsory rights order confirmed on or after the restructuring date the following section shall be substituted for section 18, that is to say—

**“18 Calculation of compensation undersection 17.**

- (1) The compensation payable for any year in respect of a holding to which section 17 of this Act applies shall be a sum equal to the annual borrowing cost for that year of the market value of the rights conferred by the compulsory rights order in relation to the holding.
- (2) For the purposes of this section the market value of any rights conferred by a compulsory rights order shall be equal to the amount which, as at the date of entry, would (apart from the order) represent the fair market price, as between willing and independent parties, for the grant of those rights by a person entitled to grant them and for the period for which the order is to have effect.
- (3) In calculating for the purposes of this section the fair market price for the grant of any rights, due allowance shall be made for any entitlement to compensation which may arise, otherwise than by virtue of section 17, under any of the provisions of this Act.
- (4) For the purposes of this section the annual borrowing cost for any year of any amount (“the market price”) is the aggregate sum which would fall to be paid in that year by way of payments of interest and re-payments of capital if the market price had been borrowed on the date of entry on terms which—
  - (a) required interest to be paid and capital to be repaid by way of the relevant number of equal annual instalments; and
  - (b) provided for interest on outstanding capital to become due immediately before the time for the payment of each instalment, at an annual rate equal, as at the entry date, to the rate prescribed under section 35(8) of this Act;and in this subsection “the relevant number” means the number of years for which, when it was confirmed, the compulsory rights order was to have effect.
- (5) Nothing in section 17 of this Act or this section shall confer any entitlement to compensation in respect of the annual borrowing cost of—
  - (a) any amount representing the value of any person’s interest in coal, or
  - (b) any amount representing the value of any opportunity arising by virtue of an interest or right in or in relation to any land to obtain or make use of any rights to win, work or get any coal.
- (6) Where the period for which a compulsory rights order is to have effect is extended under this Act, section 17 of this Act and this section shall have effect in relation to the additional period as if the rights conferred for that period had been conferred by a new compulsory rights order.”

17 Sections 19 and 20 (additional annual compensation and special compensation for cost of removal) shall not have effect in relation to any compulsory rights order confirmed on or after the restructuring date.

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### *Terminal compensation*

- 18 In section 21(1) (terminal compensation), for “by the Corporation in respect of that holding” there shall be substituted “ in respect of that holding by the person who immediately before the end of the period of occupation is the person entitled to the rights conferred by the order. ”

### *Compensation in respect of agricultural land*

- 19 (1) In section 23A (compensation with a view to furthering the resumption of agriculture)—
- (a) for the words “sections 18 and 19”, wherever they occur, there shall be substituted “ section 17 ”; and
  - (b) in subsection (4), for “by the Corporation” there shall be substituted “ by the person who immediately before the end of the period of occupation is the person entitled to the rights conferred by the order ”.
- (2) Sub-paragraph (1)(a) above does not apply in relation to any compulsory rights order confirmed before the restructuring date.

### *Compensation for short term improvements etc.*

- 20 (1) In subsection (1) of section 26 (compensation in respect of short term improvements and other matters)—
- (a) for “the Corporation occupy” there shall be substituted “ any person occupies ”; and
  - (b) for “by the Corporation” there shall be substituted “ by that person ”.
- (2) After that subsection there shall be inserted the following subsection—
- “(1A) Compensation shall not be payable by virtue of this section where a person’s occupation of any land, in exercise of rights conferred by a compulsory rights order, is confined to replacing in occupation a person previously entitled to exercise the rights conferred by that order.”
- (3) In subsection (3) of that section, the words “by the Corporation” shall be omitted.

### *Compensation in respect of forced sales*

- 21 (1) In subsection (1) of section 27 (compensation for forced sales), for “the Corporation” there shall be substituted “ the person on whose application the compulsory rights order was made ”.
- (2) After subsection (2) of that section there shall be inserted the following subsection—
- “(2A) Where, in the case of any sale in respect of which compensation is payable under this section, a person other than the person who applied for the order is entitled, on the effective date of the sale, to the rights conferred by the compulsory rights order, that compensation shall be payable by the person entitled to those rights, instead of by the person who applied for the order.”
- (3) In subsection (3) of that section—
- (a) for the words “the Corporation”, in the first place where they occur, there shall be substituted “ the person potentially liable ”; and

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- (b) for the words “the Corporation”, in the second place where they occur, there shall be substituted “ the person to whom the notice was given, or any person designated for the purpose by him, ”.

- (4) After subsection (4) of that section there shall be inserted the following subsection—

“(5) In this section—

“effective date”, in relation to a sale, means the date on which the property sold becomes the property of the purchaser; and

“the person potentially liable”, in relation to a notice relating to a sale, means the person on whom the liability to pay the compensation will fall on the effective date of the sale if the person entitled to the rights conferred by the compulsory rights order in question does not change before that date.”

*Compensation: definition of holding*

- 22 (1) In subsection (1) of section 29 (definition of holding for certain purposes of compensation), for “the Corporation” there shall be substituted “ the Coal Authority or any licensed operator (within the meaning of the Coal Industry Act 1994) ”.
- (2) In subsection (2) of that section, for “(3) and (4) of section seventeen of this Act, the provisions of sections eighteen to twenty of this Act” there shall be substituted “ (1A) and (3) to (3B) of section 17 of this Act and the provisions of section 18 of this Act ”.

*Compensation in respect of easements and other rights*

- 23 (1) In subsection (2) of section 31 (annual compensation in respect of easements and other rights)—
- (a) after “falls” there shall be inserted “ wholly or partly ”; and
- (b) the words “from the Corporation” shall be omitted.
- (2) After that subsection there shall be inserted the following subsection—
- “(2A) Subject (where different persons have been entitled to the rights for different parts of the year) to any apportionment under section 35(3) of this Act, the liability to pay compensation under subsection (2) of this section shall fall on the persons who, for the whole or any part of the year in question, have been entitled to the rights conferred by the order.”
- (3) In paragraphs (a) and (b) of subsection (3) of that section (terminal compensation in respect of easements and other rights), for the words “the Corporation”, where they occur in each paragraph, there shall be substituted “ the person who immediately before the end of the period of occupation is the person entitled to the rights conferred by the order ”.

*Compensation in respect of disposable minerals*

- 24 (1) After section 31, there shall be inserted the following section—

**“31A Compensation in respect of disposable minerals.**

- (1) The provisions of this section shall have effect where—

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- (a) any person (“the operator”) exercises any right of his by virtue of a compulsory rights order and section 10(1) to this Act to get any minerals other than coal; and
  - (b) the land where the right is exercised was not comprised in that order in the circumstances specified in section 33(1) of this Act.
- (2) The person who, apart from the compulsory rights order and section 10(1) of this Act, would have been entitled to the minerals shall be entitled (subject to the following provisions of this section) to compensation from the operator of an amount equal to 12.5 per cent. of the market value of the minerals at the time when the right is exercised.
- (3) Where, in the case of any minerals, it would be reasonable for steps for making them saleable or for enhancing their value to be taken on the land between—
  - (a) the time when those minerals are got, and
  - (b) any sale of the minerals by the operator from the land,it shall be assumed, for the purpose of determining the market value of those minerals as at the time mentioned in subsection (2) above, that the minerals were in the same condition at the time so mentioned as they would have been had those steps already been taken.
- (4) Any question for the purposes of subsection (3) above as to the extent to which it would be reasonable for any steps to be taken in relation to any minerals shall be determined as at the time mentioned in paragraph (a) of that subsection and on the assumption that it is not reasonable for steps to be taken where the total cost to the operator of taking those steps is equal to or more than the difference between—
  - (a) what would be the market value of the minerals for the purposes of subsection (2) above if it were reasonable for those steps to be taken; and
  - (b) what would be their market value for those purposes if it were not; and for this purpose, where the minerals would not be saleable without the taking of those steps, the market value referred to in paragraph (b) above shall be taken to be nil.
- (5) Where more than one person is entitled to compensation under this section, the amount of compensation mentioned in subsection (2) above shall be apportioned between them according to the values of the interests or rights in respect of which each of them would have been entitled to, or to a share of, the minerals.
- (6) As soon as reasonably practicable, after the end of every period of twelve months during which any person has exercised such a right as is mentioned in subsection (1) above, that person shall give written notice under this subsection to every person appearing to him to be a person entitled to compensation under this section in respect of any exercise by him during that period of that right.
- (7) A notice under subsection (6) above shall—
  - (a) describe the minerals in respect of which the entitlement to compensation of the person given the notice arises; and



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- (b) state the amount appearing to the person giving the notice to be the amount which for the purposes of subsection (2) above is to be taken to be the market value of those minerals as at the time when the right in question was exercised in relation to those minerals.”
- (2) This paragraph shall not apply where the right in question is exercisable by virtue of a compulsory rights order confirmed before the restructuring date.

*Compensation for depreciation of land in same ownership*

- 25 (1) In subsection (2) of section 32 (annual compensation in respect of depreciation of land in the same ownership)—
- (a) after “falling” there shall be inserted “ wholly or partly ”; and
  - (b) the words “from the Corporation” shall be omitted.
- (2) After that subsection there shall be inserted the following subsections—
- “(2A) Subject (where different persons have been entitled to the rights for different parts of the year) to any apportionment under section 35(3) of this Act, the liability to pay compensation under subsection (2) of this section shall fall on the persons who, for the whole or any part of the year in question, have been entitled to the rights conferred by the order.
- (2B) For the purposes of subsection (2) of this section the annual value of any land for any year shall be taken to be an amount equal to the annual rent at which, immediately before the beginning of that year, that land, in the appropriate circumstances, might reasonably have been expected to be let from year to year under a contract of tenancy whereby the tenant undertook—
- (a) to pay all usual tenant’s rates and taxes and to bear the cost of the repairs and insurance and the other expenses, if any, necessary to maintain the land in a state to command that rent, and
  - (b) not to carry out any operations on the land, or to make any change in the use thereof, for which permission would be required under Part III of the Act of 1990 or Part III of the Town and Country Planning (Scotland) Act 1972, except any operations for which such permission has been granted and is in force immediately before the beginning of that year.”
- (3) In subsection (3) of that section, for the words before paragraph (a) there shall be substituted—
- “(3) For the purposes of subsection (2B) of this section, the appropriate circumstances—”.
- (4) In subsection (4) of that section (terminal compensation in respect of depreciation of land in same ownership), for “the Corporation” there shall be substituted “ the person who immediately before the end of the period of occupation is the person entitled to the rights conferred by the order, and that compensation shall be ”.

*Time when compensation accrues*

- 26 (1) In subsection (1) of section 35 (introduction to provisions as to time when compensation accrues), for “the Corporation” there shall be substituted “ any person ”.

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- (2) In subsection (2) of that section—
- (a) in paragraph (a), for “the Corporation shall” there shall be substituted “every person potentially liable for the compensation shall, on account of any compensation that may become payable by him at the end of the year,”;
  - (b) in paragraph (b), for “the Corporation shall not be required to make payments” there shall be substituted “the requirement to make payments shall not arise”;
  - (c) in paragraph (c), for “to any person for any year” there shall be substituted “for any year by any person to another”; and
  - (d) in paragraph (d)—
    - (i) for “to a person for any year” there shall be substituted “for any year by any person to another”;
    - (ii) for “to him for that year, the Corporation” there shall be substituted “for that year by that person to that other person, the person who paid it”; and
    - (iii) for “to that person” there shall be substituted “by him to that other person”.
- (3) After subsection (6) of that section there shall be inserted the following subsection—
- “(6A) Any compensation payable under section 31A of this Act shall accrue due at the end of the year in which the right in question is exercised.”
- (4) In subsection (7) of that section, the words “by the Corporation” shall be omitted, and for “subsections (4) to (6)” there shall be substituted “subsections (4) to (6A)”.
- (5) In subsection (9) of that section, at the end there shall be inserted the words “; and references in this section to a person potentially liable to compensation, in relation to any time during a year at the end of which compensation may become payable under this Act, are references to the person on whom the liability to pay the compensation will fall at the end of the year if the person entitled to the rights conferred by the compulsory rights order in question does not change before the end of the year.”

#### *Records of condition of land*

- 27 (1) In subsection (1) of section 36 (records of condition of land to which compulsory rights order relates), for “the Corporation” there shall be substituted “a person entitled to the rights conferred by a compulsory rights order”.
- (2) In subsection (2) of that section (record of initial condition of land)—
- (a) for the words “the Corporation have” there shall be substituted “any person has”; and
  - (b) for the words “the Corporation shall” there shall be substituted “that person shall”.
- (3) In subsection (3) of that section (record of condition of land at end of period of occupation), for “the Corporation shall, at the end of the period of occupation” there shall be substituted “the person entitled immediately before the end of the period of occupation to the rights conferred by the order shall, at the end of that period”.
- (4) In subsection (5) of that section (service of records), for “the Corporation have caused a record to be made under this section they” there shall be substituted “any person has caused a record to be made under this section, he”.

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- (5) In subsections (6), (7) and (8) of that section, for the words “the Corporation”, in each place where they occur, there shall be substituted “ the person who served the record ”.
- (6) In subsection (9) of that section, for “the Corporation” there shall be substituted “ persons required to make records under this section ”.
- (7) After subsection (9) there shall be inserted the following subsection—
- “(9A) If any person fails to cause any record to be made or served in accordance with any requirement imposed on him by this section—
- (a) his obligation to comply with that requirement shall be enforceable by the Coal Authority as if it were a duty owed by that person to that Authority; and
  - (b) without prejudice to its rights by virtue of paragraph (a) above, that Authority may itself cause the record to be made and served in accordance with that requirement and may recover any expenses reasonably incurred in doing so from the person in contravention of that requirement.”

*Protection of land from compulsory purchase*

- 28 In section 38 (exclusion from compulsory purchase order of land subject to opencast planning permission)—
- (a) in paragraph (a), for “the Corporation” there shall be substituted “ a relevant person ”;
  - (b) in paragraph (b), for “the Corporation give” there shall be substituted “ that relevant person gives ”; and
  - (c) at the end there shall be inserted—
- “ In this section “relevant person” means any licensed operator within the meaning of the Coal Industry Act 1994 or any person who is certified by the Coal Authority as a person whose application to that Authority for a licence under Part II of that Act is pending. ”

*Entry on land*

- 29 (1) In subsection (1) of section 39 (designation of land for the purposes of certain rights of entry), after “may” there shall be inserted “ on the application of the Coal Authority ”.
- (2) In subsection (2) of that section—
- (a) for “the Corporation” there shall be substituted “ the Coal Authority ”; and
  - (b) in paragraph (c), for “the Corporation think fit” there shall be substituted “ the Coal Authority may think fit to authorise him to dispose of ”.
- (3) In subsections (3) and (7) of that section, for the words “the Corporation”, wherever they occur, there shall be substituted “ the Coal Authority ”.
- (4) The references in subsections (3)(d) and (5) of that section to section 15A(4)(c) shall be construed as references to section 15A(5)(c), and shall be deemed always to have fallen to be so construed.
- (5) After subsection (7) of that section there shall be inserted the following subsections—

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“(7A) The persons who may be authorised by the Coal Authority to exercise the powers conferred by this section shall include any person who proposes to exercise those powers for the purposes and on behalf of any person who is or has applied to become a licensed operator within the meaning of the Coal Industry Act 1994; but where—

- (a) any person does exercise powers under this section for the purposes of such a person, and
- (b) his written authority specifies that person and states that he is authorised to exercise those powers for the purposes and on behalf of that person,

subsection (7) of this section shall have effect as if the references to the Coal Authority were references to the specified person.

(7B) Any authorisation by the Coal Authority of any person for the purposes of the exercise of the powers conferred by this section, and any conditions of such an authorisation, may be revoked or varied by that Authority at any time.”

#### *Claims for compensation*

- 30 (1) In subsection (1) of section 40 (claims for compensation)—
- (a) for the words “the Corporation”, in the first place where they occur, there shall be substituted “ any person ”; and
  - (b) for the words “the Corporation”, in the second place where they occur, there shall be substituted “ that person ”.
- (2) In subsections (2)(c) and (3) of that section, for the words “the Corporation”, in each place where they occur, there shall be substituted “ any person ”.

#### *Compensation in respect of property held for religious purposes*

- 31 (1) In subsection (1) of section 42 (compensation payable in respect of property held for religious purposes), for “the Corporation” there shall be substituted “ any person (“the person liable”) ”.
- (2) In subsection (4) of that section—
- (a) for “the Corporation are” there shall be substituted “ the person liable is ”; and
  - (b) for the words “the Corporation”, in the second and third places where they occur, there shall be substituted “ the person liable ”.

#### *Provision in respect of mortgaged land*

- 32 In section 43 (compensation provisions applying to mortgaged land), the words “by the Corporation”, wherever they occur, shall be omitted.

#### *Crown land*

- 33 In section 44 (Crown land)—
- (a) in subsection (1), for “the Corporation” there shall be substituted “ the Coal Authority ”; and
  - (b) in subsection (3), the words “by the Corporation” shall be omitted.

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*Changes to legislation:* There are currently no known outstanding effects for the Coal Industry Act 1994. (See end of Document for details)

*Telecommunication apparatus*

- 34 In section 45(2) (application of paragraph 23 of the telecommunications code), for “to the Corporation for the purposes of any permitted activities” there shall be substituted “ for the purposes of any permitted activities to the person with the benefit of that permission ”.

*Provisions as to regulations, orders etc.*

- 35 After section 49(4) (general power to revoke and vary orders and directions) there shall be inserted the following subsections—

“(4A) A compulsory rights order may, by notice to the person entitled to the rights conferred by the order, be revoked at any time—

- (a) by the Coal Authority, if it is satisfied that that person has consented to the revocation; or
- (b) by the Secretary of State, if he is satisfied that that person has contravened, or is contravening, any of the provisions of the order or any requirement otherwise imposed on that person by or under this Act.

(4B) Where in the case of any compulsory rights order made or confirmed at any time on or after the restructuring date (within the meaning of the Coal Industry Act 1994), it appears to the Coal Authority—

- (a) that the order would not have been made or confirmed, or would not have extended to certain interests or rights, if a person to whom a relevant offer was made had accepted it,
- (b) that that person has, since the making of the order, made a written offer to the person entitled to the rights conferred by it (“the operator”) to enter into an agreement on the terms of the relevant offer,
- (c) that the written offer was made either at a time before the specification of a date in relation to the order as the date of entry or at a time more than twenty-eight days before any date so specified,
- (d) that the person making the offer will enter into an agreement with the operator on those terms if the order is revoked or varied under this subsection, and
- (e) that the circumstances (apart from the expiration or rejection of the relevant offer and the making and confirmation of the order) are not such as to make it unreasonable for the operator to be required to treat the terms of the relevant offer as still available for acceptance,

that Authority may, by notice to the operator and subject to such conditions as it thinks fit, either revoke the order or vary it by limiting it so that it does not extend to the interests and rights of the person who is offering to be bound by an agreement on the terms he previously failed to accept.

(4C) In subsection (4B) above “relevant offer”, in relation to a compulsory rights order, means any offer which—

- (a) was made by the applicant for the order to a person who is one of the persons directly concerned; and
- (b) was an offer as to the terms on which the applicant was willing (instead of requiring rights as against that person to be conferred

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by a compulsory rights order) to enter into an agreement with that person.”

#### *Interpretation*

- 36 (1) In subsection (1) of section 51 (interpretation)—
- (a) in the definition of “opencast planning permission”, for “the Corporation to work coal by opencast operations or to carry out” there shall be substituted “the working of coal by opencast operations or the carrying out of”; and
  - (b) after the definition of “statutory undertakers” there shall be inserted the following definition—
    - ““successor”, in relation to an applicant for an order under any provision of this Act, means any person (whether or not the immediate successor of the applicant) who—
    - (a) in accordance with the provisions of any licence granted to the applicant under Part II of the Coal Industry Act 1994, succeeds to any entitlement of that applicant under that licence to work any coal by opencast operations; or
    - (b) becomes entitled by virtue of the grant of a new licence under that Part of that Act to work by such operations any coal which the applicant was previously entitled so to work as a licensed operator within the meaning of that Act;”.
- (2) After that subsection there shall be inserted the following subsection—
- “(1A) References in this Act, in relation to any opencast planning permission, to the person with the benefit of that permission shall be construed as a reference to any person who—
- (a) is able, on account of his having all such interests or rights as (apart from that permission) he requires for the purpose, to carry out any of the permitted activities; or
  - (b) would be so able if the rights which he had and was entitled to exercise included any such right as he has applied for, or is entitled to apply for, under this Act or any right which has been conferred on him under this Act but has not yet become exercisable.”

#### *Application to Scotland*

- 37 In section 52(3) (construction of references to water authorities in relation to Scotland) after “shall” there shall be inserted “, except in so far as the context otherwise requires,”.

#### *Procedure for compulsory rights orders in Scotland*

- 38 (1) In Part I of Schedule 2 (making, confirmation, validity and date of operation of Scottish orders), in paragraph 1(1)—
- (a) after “Schedule to the” there shall be inserted, “ Scottish ”;
  - (b) in paragraph (b), for “Corporation” there shall be substituted “ Coal Authority ”; and
  - (c) in paragraph (c), the words “on the Corporation” shall be omitted.

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- (2) In paragraph 2 of that Schedule, after “in relation to the” there shall be inserted “Scottish”.
- (3) In paragraph 3 of that Schedule—
  - (a) in sub-paragraph (1)—
    - (i) for the words from the beginning to “provisions” there shall be substituted—

“(1) Paragraph 3 of that Schedule shall apply with the substitution, for sub-paragraph (b) of that paragraph, of the following paragraphs—”; and
    - (ii) in the substituted provision (c), for “head (b) of this sub-paragraph” there shall be substituted “sub-paragraph (b) of this paragraph”;
  - and
  - (b) in sub-paragraph (2), for “Corporation” there shall be substituted “Coal Authority”.
- (4) In paragraph 8 of that Schedule, for “Corporation” there shall be substituted “Coal Authority”.
- (5) In paragraph 9 of that Schedule, after “to the” there shall be inserted “Scottish”.
- (6) Paragraph 12 of that Schedule shall cease to have effect.

*Other provisions with respect to the procedure for compulsory rights orders*

- 39 (1) In paragraph 13 of Part II of Schedule 2 (procedure relating to orders), in sub-paragraph (2), for “The Corporation” there shall be substituted “The person on whose application a compulsory rights order has been made”.
- (2) In sub-paragraph (3) of that paragraph—
  - (a) for the words “The Corporation”, at the beginning, there shall be substituted “That person”;
  - (b) after “on” there shall be inserted “the Coal Authority and on”; and
  - (c) for “to the Corporation” there shall be substituted “to the person serving the notice”.
- (3) In sub-paragraph (4) of that paragraph, for “The Corporation” there shall be substituted “The person on whose application a compulsory rights order has been made”.

*Compensation by way of payment for costs of works*

- 40 (1) In Schedule 3 (terminal compensation by way of payment for works)—
  - (a) in paragraph 1, after the definition of “compensation” there shall be inserted the following definition—

““final operator” means the person who immediately before the end of the period of occupation is the person entitled to the rights conferred by the order;”and
  - (b) for the words “the Corporation”, wherever they occur in that Schedule, there shall be substituted “the final operator”.

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- (2) In paragraph 3 of that Schedule—
  - (a) in sub-paragraph (a), for “object” there shall be substituted “ objects ”; and
  - (b) in sub-paragraph (b), for “they object” there shall be substituted “ the final operator objects ”.
- (3) In paragraph 5 of that Schedule—
  - (a) in sub-paragraph (4)(a)(ii), for “have not” and “they have” there shall be substituted, respectively, “ has not ” and “ the final operator has ”; and
  - (b) in sub-paragraph (5), for “serve” there shall be substituted “ serves ”.
- (4) In paragraph 8 of that Schedule—
  - (a) in sub-paragraph (a), for “have not served” there shall be substituted “ has not served ”; and
  - (b) in sub-paragraph (b), for “have served” there shall be substituted “ has served ”.
- (5) In paragraph 9 of that Schedule—
  - (a) in sub-paragraph (1), for “have served” there shall be substituted “ has served ”; and
  - (b) in sub-paragraph (2), for “are precluded” there shall be substituted “ is precluded ”.
- (6) In paragraph 10(1) of that Schedule—
  - (a) for “have served” there shall be substituted “ has served ”; and
  - (b) in paragraph (b), for “maintain” there shall be substituted “ maintains ”.

*Compensation in respect of minerals*

41 For paragraph 2 of Schedule 5 (compensation in respect of minerals) there shall be substituted the following paragraph—

- “2 (1) Any entitlement to compensation under this Schedule shall be an entitlement to compensation from—
- (a) in the case of compensation under paragraph 4 or 12 of this Schedule, the persons who, for the whole or any part of the year in question, have been entitled to the rights conferred by the order;
  - (b) in the case of compensation under paragraph 5 of this Schedule, the person on whose application that order is made;
  - (c) in the case of compensation under paragraph 6 of this Schedule, the person by whom the compensation would be payable if it were compensation under section 27 of this Act;
  - (d) in the case of compensation under paragraph 7, 8, 9, 10 or 13 of this Schedule, the person who immediately before the end of the period of occupation is the person entitled to the rights conferred by the order.
- (2) Sub-paragraph (1)(a) of this paragraph shall have effect subject, where different persons have been entitled to the rights conferred by an order for different parts of the year, to any apportionment under section 35(3) of this Act.”



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#### *Application of Schedule 6 to Scotland*

- 42 (1) In paragraph 1(2) of Schedule 6 (changes in right of occupation), for “seventeen to nineteen” there shall be substituted “ 17 and 18 ”.
- (2) In paragraph 2 of that Schedule (new tenancies), for “seventeen to twenty” there shall be substituted “ 17 and 18 ”.
- (3) Paragraphs 8 and 9 of that Schedule (which relate to compensation under section 19 but are applied in relation to compensation under Schedule 5) shall cease to have effect except so far as applied by paragraph 10 of that Schedule.
- (4) In paragraph 26 of that Schedule (apportionment in respect of parts of a year), after sub-paragraph (4) there shall be inserted the following sub-paragraph—
- “(5) This paragraph shall not apply in relation to any compensation the entitlement to which is apportioned in accordance with section 17(3A) of this Act.”
- (5) In paragraph 31 of that Schedule (application of the Schedule to Scotland), for the words from “of land entered” to the end there shall be substituted “ falling within section 2(2)(a) of the Scottish Act of 1991, to a lease and to section 2 of the Scottish Act of 1991. ”
- (6) Sub-paragraphs (1) to (4) above shall not apply in relation to any compulsory rights order confirmed before the restructuring date.

#### *Tenancies of allotment gardens and other allotments*

- 43 (1) In paragraph 3 of Schedule 8 (compensation for termination of allotment tenancy), for “the Corporation” there shall be substituted “ the person on whose application the order was made ”.
- (2) In paragraph 4 of that Schedule (amount of compensation payable by the Corporation and interest), the words “by the Corporation” shall be omitted.
- (3) In paragraph 5 of that Schedule (compensation for forced sales), the words “from the Corporation” in sub-paragraph (1) shall be omitted, and after that sub-paragraph there shall be inserted the following sub-paragraph—
- “(1A) Compensation under this paragraph shall be payable by the person by whom it would be payable if it were compensation under section 27 of this Act.”
- (4) In paragraph 6(3) of that Schedule (application of section 35(7) and (8)), the words “by the Corporation” shall be omitted.
- (5) In paragraph 7 of that Schedule (disputes)—
- (a) in sub-paragraphs (a) and (b), the words “from the Corporation” shall be omitted; and
- (b) in the words after sub-paragraph (b), for “the Corporation” there shall be substituted “ the person from whom it is claimed ”.
- (6) In paragraph 8 of that Schedule (costs of valuation), for “the Corporation” there shall be substituted “ the person from whom the compensation under this Schedule is claimed ”.

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## SCHEDULE 9

Section 67.

## MINOR AND CONSEQUENTIAL AMENDMENTS

*The Land Registration Act 1925 (c. 21)*

- 1 (1) Any interest in land consisting in an interest in any coal or coal mine, the rights attached to any such interest and the rights of any person under section 38, 49 or 51 of this Act shall, unless registered or otherwise entered on the register, be overriding interests for the purposes of the Land Registration Act 1925; but the registrar shall not be required by virtue of section 70(2) or (3) of that Act to enter any note or notice of any such interest or right, or of any claim to any such interest or right, in the register.
- (2) Accordingly, in section 70 of that Act (overriding interests)—
- (a) in subsection (1), after paragraph (l) there shall be inserted the following paragraph—
- “(m) any interest or right which is an overriding interest by virtue of paragraph 1(1) of Schedule 9 to the Coal Industry Act 1994.”; and
- (b) after subsection (3) there shall be inserted the following subsection—
- “(4) Neither subsection (2) nor subsection (3) of this section shall apply in the case of any such interest or right as is mentioned in subsection (1)(m) of this section.”
- (3) Nothing in section 48 or 54 of the Land Registration Act 1925 (notices and cautions) or in any rules made by virtue of section 49(1)(b) of that Act (notices in respect of the severance of mines or minerals) shall confer any entitlement on any person to register or lodge, in relation to any land, any notice or caution relating to an interest which—
- (a) is or, but for being registered or otherwise entered on the register, would be an overriding interest by virtue of sub-paragraph (1) above; and
- (b) is an interest in, or a right conferred by reference to, any coal or coal mine the freehold interest in which does not belong to a registered proprietor of the freehold estate in that land.

*The Requisitioned Land and War Works Act 1945 (c. 43)*

- 2 In section 34(1) of the Requisitioned Land and War Works Act 1945 (compulsory acquisition under the Defence Acts), for “subsection (1) of section 17 of the Coal Act 1938” there shall be substituted “section 10(3) of the Coal Industry Act 1994”.

*The Statistics of Trade Act 1947 (c. 39)*

- 3 In section 9 of the Statistics of Trade Act 1947, after subsection (5) (which includes provision authorising the disclosure of the total quantity or value of articles produced, sold or delivered by any person) there shall be inserted the following subsection—
- “(5A) In subsection (5)(b) of this section the references to the total quantity or value of any articles produced, sold or delivered shall, in relation to coal of any particular description, include a reference to each of the following, that is to say—

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- (a) the total quantity or value of the coal of that description which is consumed in Great Britain by persons who carry on coal-mining operations;
  - (b) the total quantity or value of the coal of that description which, in Great Britain, is held as stocks by such persons; and
  - (c) the total quantity or value of the coal of that description which is delivered in Great Britain to persons who appear to the competent authority to be all of the same description;
- and in this subsection “coal” means coal within the meaning of the Coal Industry Act 1994 or any product of coal and “coal-mining operations” has the same meaning as in that Act.”

*The Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (c. 42)*

- 4 After section 6 of the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 there shall be inserted the following section—

**“6A Application for the purposes of the Opencast Coal Act 1958.**

In the application of this Act for the purposes of section 4(5) of the Opencast Coal Act 1958, Part III of Schedule 1 shall apply as if paragraph 9 were omitted and the acquisition to which the compulsory rights order related were not affected by section 120 of the Local Government, Planning and Land Act 1980.”

*The Landlord and Tenant Act 1954 (c. 56)*

- 5 In the definition of “statutory undertakers” in section 69(1) of the Landlord and Tenant Act 1954 (interpretation), the words from “except that” to the end shall be omitted.

*The Public Records Act 1958 (c. 51)*

PROSPECTIVE

- 6 In Part II of the Table in paragraph 3 of Schedule 1 to the Public Records Act 1958, there shall be inserted at the appropriate place “ Coal Authority ”.

VALID FROM 27/03/2004

*The Public Health Act 1961 (c. 64)*

- 7 In the fourth item in the Table in Schedule 4 to the Public Health Act 1961 (attachment of street lighting equipment to certain buildings), in the first column, the reference to the Corporation shall be omitted.

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*The Licensing Act 1964 (c. 26)*

8 In section 56(3) of the Licensing Act 1964 (definition of “miners’ welfare institute”), for paragraph (a) and the word “either” immediately preceding it there shall be substituted the following paragraphs—

“(a) it is managed by a committee or board of which not less than two-thirds consists partly of persons appointed by or on the nomination of, or appointed or elected from among persons nominated by, a licensed operator or operators (within the meaning of the Coal Industry Act 1994) and partly of persons appointed by or on the nomination of, or appointed or elected from among persons nominated by, an organisation or organisations representing persons employed in or about coal mines;

(aa) in the case of an institute in relation to which either—  
(i) the making of an appointment or nomination by a licensed operator, or  
(ii) the making of an appointment or nomination by such an organisation as is mentioned in paragraph (a) above,

is not practicable or would not be appropriate, it is managed by a committee or board of which not less than two-thirds consists partly of persons employed or formerly employed in or about coal mines and partly of persons appointed by the Coal Industry Social Welfare Organisation or a body or person to which the functions of that Organisation have been transferred under section 12(3) of the Miners’ Welfare Act 1952; or”.

**Commencement Information**

**I9** Sch. 9 para. 8 in force except in so far as it relates to provisions coming into force on the restructuring date by virtue of s. 68(2)(d) at 31.10.1994 by S.I. 1994/2552, art. 2, **Sch. 1**

*The Gas Act 1965 (c. 36)*

9 In section 13(8) of the Gas Act 1965 (exclusion of section 17 of the <sup>M130</sup>Coal Act 1938)—

(a) for “Section 17 of the Coal Act 1938” there shall be substituted “ Section 10(3) of the Coal Industry Act 1994 ”, and

(b) for “mine of coal (as defined in section 44(1) of the said Act of 1938)” there shall be substituted “ coal mine (as defined in section 65 of the said Act of 1994) ”.

**Marginal Citations**

**M130** 1938 c. 53.

*The Mines (Working Facilities and Support) Act 1966 (c. 4)*

10 (1) In the Table in section 1 of the Mines (Working Facilities and Support) Act 1966 (provisions for the acquisition of rights to minerals)—

(a) in paragraph 1, the words “coal and” shall be omitted;

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- (b) paragraph 3 shall cease to have effect; and
  - (c) in paragraph 4(2), for “British Coal Corporation” there shall be substituted “Coal Authority”.
- (2) Where an application has been made before the date on which this paragraph comes into force with respect to the grant of a right under paragraph 3(2) of the Table in section 1 of that Act, that application may be continued and disposed of on or after that date as if it were an application under paragraph 1 of that Table.
- (3) In section 4 of that Act—
- (a) subsection (5) (applications in respect of coal confined to cases where the Corporation has no power to make grant), shall have effect in relation to any time after the coming into force of this paragraph with the substitution—
    - (i) of “paragraph 1” for “ paragraph 3(2) ”;
    - (ii) of “in respect of coal” for “ otherwise than by the British Coal Corporation ”; and
    - (iii) of “Coal Authority” for the words “ British Coal Corporation ”, in the second place where they occur;
  - and
  - (b) after that subsection there shall be inserted the following subsection—
    - “(6) In subsection (5) above “coal” does not include lignite or brown coal but (subject to that) does include, together with coal as defined in this Act, all other minerals worked or to be worked therewith.”
- (4) After section 7 of that Act (imposition 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) there shall be inserted the following section—

**“7A Special provisions applying to section 7.**

- (1) Subject to subsections (2) and (3) below, on an application under section 7 of this Act, the applicant shall not be required to pay or give any compensation or consideration in respect of the imposition of restrictions appearing to the court to be justified by the existence of any right to withdraw support to which any person is entitled under section 38 of the Coal Industry Act 1994 (withdrawal of support).
- (2) Subsection (1) above shall not apply in a case where, in accordance with subsection (2)(b) of section 38 of the Coal Industry Act 1994, that section applies to the land in question by virtue of subsection (5)(a) of section 2 of the Coal Industry Act 1975.
- (3) Subsection (1) above shall apply in any case where section 38 of the Coal Industry Act 1994 applies to the land in question otherwise than by virtue of subsection (5) of section 2 of the Coal Industry Act 1975 only if the application under section 7 of this Act is sent to the Secretary of State before the end of the period of six months beginning with the date on which particulars of the notice relating to the land to which the application relates are first registered by the Coal Authority under section 56 of the Coal Industry Act 1994.

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- (4) Notwithstanding anything in section 12 of this Act, any restrictions the imposition of which appears to the court to be justified as mentioned in subsection (1) above—
- (a) may be imposed under section 7 of this 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 12; and
  - (b) may be so imposed on the application of, and so as to vest the right to enforce the restrictions in—
    - (i) the National Rivers Authority or any water or sewerage undertaker;
    - (ii) any public gas supplier within the meaning of Part I of the Gas Act 1986; or
    - (iii) any company or other body or person carrying on an undertaking primarily for the supply of electricity or hydraulic power for public purposes or to members of the public.”

*The Land Commission Act 1967 (c. 1)*

- 11 (1) In section 14 of the Land Commission Act 1967 (power to override easements and other rights in England and Wales)—
- (a) in subsection (2), for the words from “statutory undertakers” to “unless” there shall be substituted “ or statutory undertakers) unless ”; and
  - (b) subsection (5) shall cease to have effect.
- (2) In section 15 of that Act (power to override servitudes and other rights in Scotland)—
- (a) in subsection (2), for the words from “statutory undertakers” to “unless” there shall be substituted “ or statutory undertakers) unless ”; and
  - (b) subsection (5) shall cease to have effect.
- (3) In section 58 of that Act (statutory undertakers and the Corporation), subsections (5) and (6) shall cease to have effect.
- (4) In section 89 of that Act (statutory undertakers), subsection (7) shall cease to have effect.
- (5) In paragraph 10 of Part I of Schedule 5 to that Act (dispositions by exempted bodies during an interim period), in sub-paragraph (2)(c), the words from “or the chargeable interest” to the end shall be omitted.

**Commencement Information**

- I10** Sch. 9 para. 11(1)(2) in force except in so far as it relates to provisions coming into force on the restructuring date by virtue of s. 68(2)(d) at 31.10.1994 by [S.I. 1994/2552](#), [art. 2](#), [Sch. 1](#)
- I11** Sch. 9 para. 11(1)(2) in force in so far as not already in force and Sch. 9 para. 11(3)-(5) in force at 31.10.1994 (“the restructuring date”), see ss. 7, 68(2) and [S.I. 1994/2553](#), [art. 2](#)

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*The Gaming Act 1968 (c. 65)*

12 In section 52(2) of the Gaming Act 1968 (definition of “miners’ welfare institute”), for paragraph (a) and the word “either” immediately preceding it there shall be substituted the following paragraphs—

“(a) the institute is managed by a committee or board of which not less than two-thirds consists partly of persons appointed by or on the nomination of, or appointed or elected from among persons nominated by, a licensed operator or operators (within the meaning of the Coal Industry Act 1994) and partly of persons appointed by or on the nomination of, or appointed or elected from among persons nominated by, an organisation or organisations representing persons employed in or about coal mines;

(aa) in the case of an institute in relation to which either—

(i) the making of an appointment or nomination by a licensed operator, or

(ii) the making of an appointment or nomination by such an organisation as is mentioned in paragraph (a) above,

is not practicable or would not be appropriate, it is managed by a committee or board of which not less than two-thirds consists partly of persons employed or formerly employed in or about coal mines and partly of persons appointed by the Coal Industry Social Welfare Organisation or a body or person to which the functions of that Organisation have been transferred under section 12(3) of the Miners’ Welfare Act 1952; or”.

**Commencement Information**

**I12** Sch. 9 para. 12 in force except in so far as it relates to provisions coming into force on the restructuring date by virtue of s. 68(2)(d) at 31.10.1994 by [S.I. 1994/2552](#), [art. 2](#), [Sch. 1](#)

*The Town and Country Planning (Scotland) Act 1972 (c. 52)*

13 (1) In section 181(1)(a) of the Town and Country Planning (Scotland) Act 1972 (application of provisions of that Act in relation to certain land), the words “or of the British Coal Corporation” shall be omitted.

(2) In section 205 of that Act (procedure in anticipation of planning permission), in subsection (2)(a), the words “or the British Coal Corporation” shall be omitted.

(3) Sections 251(3)(b) and 259 of that Act (minerals vested in the Corporation and application of that Act to the Corporation) shall cease to have effect.

**Commencement Information**

**I13** Sch. 9 para. 13(1)(2) at 31.10.1994 (“the restructuring date”), see ss. 7, 68(2) and [S.I. 1994/2553](#), [art. 2](#)

**I14** Sch. 9 para. 13(3) in force at 1.11.1994 by [S.I. 1994/2552](#), [art. 3](#), [Sch. 2](#)

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*The Fair Trading Act 1973 (c. 41)*

- 14 In section 133(2) of the Fair Trading Act 1973 (exceptions from the general restriction on the disclosure of information obtained under or by virtue of certain provisions of that Act), in paragraph (a)—
- (a) for “or the Authorised Conveyancing Practitioners Board” there shall be substituted “ the Authorised Conveyancing Practitioners Board, the Coal Authority ”; and
  - (b) after “or the Railways Act 1993” there shall be inserted “ or the Coal Industry Act 1994 ”.

*The Consumer Credit Act 1974 (c. 39)*

- 15 In section 174(3) of the Consumer Credit Act 1974 (exceptions from the general restriction on the disclosure of information obtained under or by virtue of that Act), in paragraph (a)—
- (a) after “or the Railways Act 1993” there shall be inserted “ or the Coal Industry Act 1994 ”; and
  - (b) for “or the Authorised Conveyancing Practitioners Board” there shall be substituted “ the Authorised Conveyancing Practitioners Board, the Coal Authority ”.

*The Welsh Development Agency Act 1975 (c. 70)*

- 16 In section 27(1) of the Welsh Development Agency Act 1975 (interpretation), in paragraph (b) of the definition of “statutory undertakers” the words “the British Coal Corporation” shall be omitted.

*The Restrictive Trade Practices Act 1976 (c. 34)*

- 17 In section 41(1) of the Restrictive Trade Practices Act 1976 (exceptions from the general restriction on the disclosure of information obtained under or by virtue of that Act), in paragraph (a)—
- (a) for “or the Authorised Conveyancing Practitioners Board” there shall be substituted “ the Authorised Conveyancing Practitioners Board, the Coal Authority ”; and
  - (b) after “or the Railways Act 1993” there shall be inserted “ or the Coal Industry Act 1994 ”.

*The Local Government (Miscellaneous Provisions) Act 1976 (c.57)*

- 18 (1) In section 15(3) of the Local Government (Miscellaneous Provisions) Act 1976 (restrictions on power of local authorities to survey land which they propose to acquire compulsorily), for “the Civil Aviation Authority and the British Coal Corporation” there shall be substituted “ and the Civil Aviation Authority ”.
- (2) In section 26(6)(b) of that Act (exemptions from power of certain councils with respect to dangerous excavations), for “the British Coal Corporation” there shall be substituted “ the Coal Authority ”.



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**Status:** Point in time view as at 22/08/1996. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** There are currently no known outstanding effects for the Coal Industry Act 1994. (See end of Document for details)

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*The Development of Rural Wales Act 1976 (c. 75)*

- 19 (1) In paragraph (d) of section 4(1) of the Development of Rural Wales Act 1976 (power of the Development Board for Rural Wales to provide finance), in sub-paragraph (i), after “statutory undertakers” there shall be inserted “ or by the Coal Authority ”.
- (2) In section 34(1) of that Act (interpretation), in paragraph (b) of the definition of “statutory undertakers”, the words “the British Coal Corporation” shall be omitted.
- (3) In the Table in paragraph 56(3) of Schedule 3 to that Act (meaning of “appropriate Minister”), paragraph 8 shall cease to have effect.

*The Land Registration (Scotland) Act 1979 (c. 33)*

- 20 In section 28(1) of the Land Registration (Scotland) Act 1979 (interpretation), in the definition of “overriding interest”, after paragraph (eg) there shall be inserted the following paragraph—
- “(eh) insofar as it is an interest vesting by virtue of section 7(3) of the Coal Industry Act 1994, the Coal Authority;”.

*The Estate Agents Act 1979 (c. 38)*

- 21 In section 10(3) of the Estate Agents Act 1979 (exceptions from the general restriction on the disclosure of information obtained under or by virtue of that Act), in paragraph (a)—
- (a) after “or the Railways Act 1993” there shall be inserted “ or the Coal Industry Act 1994 ”; and
- (b) for “or the Authorised Conveyancing Practitioners Board” there shall be substituted “ the Authorised Conveyancing Practitioners Board, the Coal Authority ”.

*The Ancient Monuments and Archaeological Areas Act 1979 (c.46)*

- 22 In section 61(2)(b) of the Ancient Monuments and Archaeological Areas Act 1979 (meaning of “statutory undertakers”), the words “the British Coal Corporation” shall be omitted.

*The Competition Act 1980 (c. 21)*

- 23 (1) In subsection (2) of section 19 of the Competition Act 1980 (which provides that the general restriction on the disclosure of information obtained under or by virtue of that Act does not apply in relation to the performance by certain authorities of the functions under the provisions listed in subsection (3) of that section), in paragraph (a), after “the Authorised Conveyancing Practitioners Board” there shall be inserted “ the Coal Authority ”.
- (2) In subsection (3) of that section, after the paragraph (o) inserted by paragraph 12(3) of Schedule 12 to the <sup>M131</sup>Railways Act 1993 there shall be inserted the following sub-paragraph—
- “(p) the Coal Industry Act 1994;”.

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**Changes to legislation:** There are currently no known outstanding effects for the Coal Industry Act 1994. (See end of Document for details)

### Marginal Citations

M131 1993 c. 43.

VALID FROM 27/03/2004

### *The Overseas Development and Co-operation Act 1980 (c. 63)*

- 24 (1) In section 2 of the Overseas Development and Co-operation Act 1980 (powers of statutory bodies in relation to the furnishing of assistance), subsection (4) (the Corporation) shall cease to have effect.
- (2) In Part III of Schedule 1 to that Act (statutory bodies with powers to furnish assistance under that Act), the entry relating to the British Coal Corporation shall be omitted.

### *The Local Government, Planning and Land Act 1980 (c. 65)*

- 25 (1) In paragraph (b) of the definition of “statutory undertakers” in each of sections 108(1), 120(3) and 170(1) of the Local Government, Planning and Land Act 1980 (definitions of “statutory undertakers”), the words “the British Coal Corporation” shall be omitted.
- (2) In Schedule 16 to that Act (bodies to whom provisions relating to land held by public bodies apply), in paragraph 14, for “The British Coal Corporation” there shall be substituted “The Coal Authority”.

### *The Highways Act 1980 (c. 66)*

- 26 In section 290 of the Highways Act 1980 (supplementary provisions as to powers of entry for the purpose of survey)—
- (a) in subsection (5)—
- (i) for “of the British Coal Corporation, or” there shall be substituted “of the Coal Authority, of any licensed operator (within the meaning of the Coal Industry Act 1994) or ”; and
- (ii) for the words from “to that Corporation” to the end there shall be substituted “to that Authority or, as the case may be, to the licensed operator or statutory undertakers concerned. ”;
- and
- (b) in subsection (7), the words “the British Coal Corporation, or” shall be omitted.

### *The Acquisition of Land Act 1981 (c. 67)*

- 27 (1) In section 17(4) of the Acquisition of Land Act 1981 (interpretation), paragraph (a) of the definition of “statutory undertakers” (the British Coal Corporation) shall be omitted.

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**Changes to legislation:** There are currently no known outstanding effects for the Coal Industry Act 1994. (See end of Document for details)

- (2) In section 29 of that Act (application for the purposes of the <sup>M132</sup>Opencast Coal Act 1958)—
- (a) in subsection (2)—
- (i) in paragraph (b), for “the British Coal Corporation” there shall be substituted “the Coal Authority”; and
- (ii) in paragraph (c), the words “on the British Coal Corporation” shall be omitted;
- and
- (b) after subsection (6) there shall be inserted the following subsection—
- “(6A) Part III of this Act shall apply as if section 17 were omitted.”
- (3) In paragraph 1(5) of Schedule 2 to that Act (saving for section 17 of the <sup>M133</sup>Coal Act 1938), for “section 17(1) of the Coal Act 1938” there shall be substituted “section 10(3) of the Coal Industry Act 1994”.

**Marginal Citations**

**M132** 1958 c. 69.

**M133** 1938 c. 52.

*The Civic Government (Scotland) Act 1982 (c. 45)*

- 28 In section 123(1) of the Civic Government (Scotland) Act 1982 (interpretation), in the definition of “statutory undertakers”, the words “the British Coal Corporation” shall be omitted.

VALID FROM 27/03/2004

*The National Audit Act 1983 (c. 44)*

- 29 In Part I of Schedule 4 to the National Audit Act 1983 (nationalised industries and other public bodies), the entry relating to the British Coal Corporation shall be omitted.

VALID FROM 27/03/2004

*The Road Traffic Regulation Act 1984 (c. 27)*

- 30 In paragraph 3 of Schedule 5 to the Road Traffic Regulation Act 1984 (buildings in relation to which the Secretary of State is the appropriate authority), in the first column, the reference to the Corporation shall be omitted.

*The Roads (Scotland) Act 1984 (c. 54)*

- 31 In section 140 of the Roads (Scotland) Act 1984 (right to enter land)—
- (a) in subsection (3)(b)—

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*Changes to legislation: There are currently no known outstanding effects for the Coal Industry Act 1994. (See end of Document for details)*

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- (i) for “the British Coal Corporation, and” there shall be substituted “the Coal Authority, any licensed operator (within the meaning of the Coal Industry Act 1994), and”; and
- (ii) for “the Corporation’s or” there shall be substituted “the Authority’s, licensed operator’s, or”;

and

- (b) in subsection (4), the words “or the British Coal Corporation” shall be omitted.

*The Companies Act 1985 (c. 6)*

- 32 The Companies Act 1985 shall have effect in relation to any company which—
- (a) is wholly owned by the Crown, and
  - (b) has been notified by the Secretary of State that it is a company to which it is proposed to transfer any part of the Corporation’s undertaking,
- as if references to a shadow director did not include references to the Treasury or to any Minister of the Crown in accordance with whose directions or instructions the directors of the company are accustomed to act.

*The Housing Act 1985 (c. 68)*

- 33 In section 573(1) of the Housing Act 1985 (meaning of “public sector authority”), after “the British Coal Corporation” there shall be inserted “, the Coal Authority”.

*The Weights and Measures Act 1985 (c. 72)*

- 34 In paragraph 28 of Schedule 5 to the Weights and Measures Act 1985 (exemption of the Corporation from certain provisions)—
- (a) sub-paragraphs (1) and (3) shall cease to have effect; and
  - (b) in sub-paragraph (2), the words from “other than” to “applies” shall be omitted.

*The Agricultural Holdings Act 1986 (c. 5)*

- 35 Paragraph 8(1)(a) of Part II of Schedule 3 to the Agricultural Holdings Act 1986 (provision applicable to case where consent of tribunal to operation of notice to quit is not required) shall cease to have effect.

*The Coal Industry Act 1987 (c. 3)*

- 36 In section 5 of the Coal Industry Act 1987 (coal industry trusts)—
- (a) references to the body known as the Coal Industry Social Welfare Organisation shall include references to any person to whom functions of that body are transferred under section 12(3) of the <sup>M134</sup>Miners’ Welfare Act 1952; and
  - (b) for subsection (4) there shall be substituted the following subsection—
    - “(4) In this section “an employee organisation” means any organisation appearing to the Charity Commissioners to represent in respect of their employment a substantial number of persons whose employers are licensed operators within the meaning of the Coal

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**Changes to legislation:** There are currently no known outstanding effects for the Coal Industry Act 1994. (See end of Document for details)

Industry Act 1994, or who are all employed by the same licensed operator.”

#### Marginal Citations

M134 1952 c. 23.

#### *The Housing Act 1988 (c. 50)*

- 37 In paragraph 4(b) of Part I of Schedule 9 to the Housing Act 1988 (meaning of “statutory undertakers”), the words “the British Coal Corporation” shall be omitted.

#### *The Electricity Act 1989 (c. 29)*

- 38 (1) In subsection (2) of section 57 of the Electricity Act 1989 (which provides that the general restriction on the disclosure of information obtained under or by virtue of that Act does not apply in relation to the performance by certain authorities of their functions under the provisions listed in subsection (3) of that section), in paragraph (b), after sub-paragraph (ix) there shall be inserted the following sub-paragraph—  
“(ixa) the Coal Authority; or”.

- (2) In subsection (3) of that section, after paragraph (nn) there shall be inserted the following paragraph—  
“(nnn) the Coal Industry Act 1994;”.

#### *The Town and Country Planning Act 1990 (c. 8)*

- 39 (1) In section 253(2)(a) of the Town and Country Planning Act 1990 (publication of notice of draft order stopping up or diverting highway), the words “or the British Coal Corporation” shall be omitted.
- (2) In section 315(4) of that Act (disapplication of regulation-making power from certain developments of the Corporation), paragraph (b) and the word “or” immediately preceding it shall cease to have effect.
- (3) Section 317 of that Act (regulation-making power to apply certain enactments to the Corporation) shall cease to have effect.
- (4) In paragraph 1(a)(i) of Schedule 13 to that Act (certain land required for the purposes of certain bodies to be blighted land), the words “or of the British Coal Corporation” shall be omitted.

#### Commencement Information

**I15** Sch. 9 para. 39(1)(4) in force at 31.10.1994 (“the restructuring date”), see ss. 7, 68(2) and [S.I. 1994/2553, art. 2](#)

**I16** Sch. 9 para. 39(2)(3) in force at 1.11.1994 by [S.I. 1994/2552, art. 3, Sch. 2](#)

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*Changes to legislation: There are currently no known outstanding effects for the Coal Industry Act 1994. (See end of Document for details)*

*The Planning (Listed Buildings and Conservation Areas) Act 1990 (c. 9)*

- 40 Section 85 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (regulation-making power to apply certain enactments relating to statutory undertakers to the Corporation) shall cease to have effect.

*The Coal Mining Subsidence Act 1991 (c. 45)*

- 41 (1) In subsection (7) of section 27 of the 1991 Act (interest on compensation)—
- (a) for “from the end of the period mentioned in subsection (5) above” there shall be substituted “ from the date of the claim on which the payment is made ”; and
  - (b) at the end there shall be inserted “ but any period of delay in determining the amount of any such payment which is attributable to unreasonable conduct on the part of that person shall be disregarded for the purposes of this subsection. ”
- (2) In subsection (6) of section 30 of the 1991 Act (interest on compensation)—
- (a) for “from the end of the period mentioned in subsection (5) above” there shall be substituted “ from the date of the claim on which the payment is made ”; and
  - (b) at the end there shall be inserted “ but any period of delay in determining the amount of any such payment which is attributable to unreasonable conduct on the part of that firm shall be disregarded for the purposes of this subsection. ”
- (3) For section 51 of the 1991 Act there shall be substituted the following section—

**“51 Service of documents**

Section 63 of the Coal Industry Act 1994 (service of documents) shall apply in relation to any notice, request, claim or other document which is required or authorised by virtue of this Act to be served on any person (whether by being given, made or sent to that person or otherwise) as it applies in relation to any document which is required or authorised to be served on any person by virtue of that Act.”

- (4) In paragraph 3(5) of Schedule 6 to the 1991 Act (interest on farm loss payments), at the end there shall be inserted “ but any period of delay in determining the amount of any such payment which is attributable to unreasonable conduct on the part of that person shall be disregarded for the purposes of this sub-paragraph. ”
- (5) In paragraph 2 of Schedule 7 to the 1991 Act (saving where right to withdraw support was conferred by paragraph 5 of Schedule 2 to the <sup>M135</sup>Coal Act 1938), in sub-paragraph (1)(b), after “Act” there shall be inserted “ or section 38 of the Coal Industry Act 1994 ”.

**Marginal Citations**

M135 1938 c. 52.

*Status:* Point in time view as at 22/08/1996. This version of this Act contains provisions that are not valid for this point in time.

*Changes to legislation:* There are currently no known outstanding effects for the Coal Industry Act 1994. (See end of Document for details)

*The Water Industry Act 1991 (c. 56)*

- 42 In paragraph 1(5) of Schedule 13 to the Water Industry Act 1991 (protection for certain undertakings)—
- (a) in paragraph (a), for “the British Coal Corporation” there shall be substituted “the Coal Authority”; and
  - (b) at the end, there shall be inserted the following paragraph—
    - “(j) the undertaking of any licensed operator, within the meaning of the Coal Industry Act 1994;”.

*The Water Resources Act 1991 (c. 57)*

- 43 (1) In paragraph 1(4) of Schedule 22 to the Water Resources Act 1991 (protection for certain undertakings)—
- (a) in paragraph (a), for “the British Coal Corporation” there shall be substituted “the Coal Authority”; and
  - (b) at the end there shall be inserted the following paragraph—
    - “(j) the undertaking of any licensed operator, within the meaning of the Coal Industry Act 1994;”.
- (2) In Schedule 24 to that Act (authorities and enactments which are relevant to the exceptions to the restrictions under that Act on the disclosure of information)—
- (a) in Part I, after the entry relating to the Director General of Electricity Supply, there shall be inserted the following entry—
    - “The Coal Authority.”; and
  - (b) in Part II, after the entry relating to the Electricity Act 1989 there shall be inserted the following entry—
    - “The Coal Industry Act 1994.”

*The Land Drainage Act 1991 (c. 59)*

- 44 In paragraph 1(1) of Schedule 6 to the Land Drainage Act 1991 (protection for certain undertakings)—
- (a) in paragraph (a), for “the British Coal Corporation” there shall be substituted “the Coal Authority”; and
  - (b) at the end, there shall be inserted the following paragraph—
    - “(j) the undertaking of any licensed operator, within the meaning of the Coal Industry Act 1994.”

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*The Leasehold Reform, Housing and Urban Development Act 1993 (c. 28)*

- 45 In section 161(7) of the Leasehold Reform, Housing and Urban Development Act 1993 (interpretation), in paragraph (b) of the definition of “statutory undertakers”, the words “the British Coal Corporation” shall be omitted.

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## SCHEDULE 10

Section 67.

## TRANSITIONAL PROVISIONS AND SAVINGS

*General saving for repeal of the Coal Act 1938*

- 1 Where this Act repeals any provisions of the <sup>M136</sup>Coal Act 1938, that repeal shall not affect so much of this Act or any other enactment as makes provision by reference to anything within the meaning of that Act.

**Marginal Citations**

<sup>M136</sup> 1938 c. 52.

*Deemed acknowledgments under section 14(3) of the Coal Act 1938*

- 2 The repeal by this Act of subsection (3) of section 14 of the Coal Act 1938 shall not have effect so as, at any time after the coming into force of that repeal, to prevent any rights or obligations from arising in accordance with section 64 of the <sup>M137</sup>Law of Property Act 1925 (production and safe custody of documents) in respect of an acknowledgment which was deemed under that subsection to have been given to the Coal Commission.

**Marginal Citations**

<sup>M137</sup> 1925 c. 20.

*Restrictions under section 33 of the Coal Act 1938*

- 3 (1) Notwithstanding the repeal by this Act of section 33 of the <sup>M138</sup>Coal Act 1938 (consent required for working of coal previously vested in statutory undertakers), where any coal which is vested in the Corporation immediately before the restructuring date is coal which by virtue of that section cannot be worked without the consent of the person in whom any undertaking is vested, the consent of the person in whom that undertaking is for the time being vested shall continue, subject to sub-paragraph (2) below, to be required, on and after that date, for the working of that coal.
- (2) The consent required by virtue of sub-paragraph (1) above for the working of any coal shall, if at any time the undertaking in question is vested in a person having no interest in land supported by that coal, cease from that time to be so required.
- (3) A consent required by virtue of this paragraph shall not be unreasonably withheld.
- (4) Sub-paragraph (3) above does not preclude the right of any person whose consent is sought for the purposes of this paragraph—
- (a) to give consent subject, so far as may be reasonably requisite—
- (i) to a condition that the working of the coal shall not be such as to let down any land in which that person is interested in respect of the undertaking in question or shall be limited to working in particular places or in a particular manner, or



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- (ii) to other conditions or limitations as regards the working consented to or the payment of proper compensation for, or the making good of, 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.
- (5) Any question arising under sub-paragraph (3) or (4) above shall be referred to and determined by the High Court or, in the case of coal in Scotland, the Court of Session.
- (6) On a reference under sub-paragraph (5) above, the High Court or Court of Session shall have power to dispense with the required consent either without conditions or limitations or subject to any such conditions or limitations as are mentioned in sub-paragraph (4) above.
- (7) In determining any question referred to it under sub-paragraph (5) above the High Court or Court of Session shall have regard primarily to the safety and efficient working of the undertaking in question.
- (8) The requirements of this paragraph—
- (a) shall be enforceable by the persons in whom the undertaking in question is for the time being vested; and
  - (b) shall be so enforceable in the same manner, and (subject to any transfer of liabilities in accordance with a restructuring scheme) against the same persons, as by virtue of section 33(6) of the <sup>M139</sup>Coal Act 1938, it would have been enforceable immediately before the restructuring date by the persons in whom that undertaking was vested at that time.

#### Marginal Citations

M138 1938 c. 52.

M139 1938 c. 52.

#### *Rights saved by section 34 of the Coal Act 1938*

- 4 (1) Neither the repeal by this Act of section 34 of the Coal Act 1938 (saving for certain statutory rights) nor the transfer by or under this Act of any interest in any land vested in the Corporation immediately before the restructuring date shall affect any such right as is referred to in subsection (1) of that section and is a right subject to which any land is held by the Corporation at that time.
- (2) Sub-paragraph (1) above shall be without prejudice to the transfer by or under this Act to any person of the Corporation's liabilities in respect of any such right as is mentioned in that sub-paragraph.

#### *Saving for rights under section 43(6) of the Coal Act 1938*

- 5 The repeal by this Act of section 43 of the <sup>M140</sup>Coal Act 1938 (application of that Act in special cases) shall not affect—
- (a) any right of the Forestry Commissioners, as mentioned in subsection (6) of that section, to recover rent accruing on or after the restructuring date;

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- (b) the obligation of those Commissioners in accordance with that subsection to pay that rent to the Corporation or, as the case may be, to the person to whom the Corporation's right to receive that rent has been transferred in accordance with a restructuring scheme; or
- (c) the obligation under that subsection of the Corporation or, as the case may be, of the person to whom the Corporation's obligations under that subsection have been so transferred to pay to those Commissioners any expenses incurred in the exercise, at any time on or after the restructuring date, of the powers mentioned in that subsection.

**Marginal Citations**

M140 1938 c. 52.

*Licences under section 36 of the 1946 Act*

- 6 As well as being subject to the savings in section 25(3) and (4) of this Act, the repeal by this Act of sections 1(1)(a) and (2)(a) and 36 of the 1946 Act (exclusive rights in relation to coal and licences as to certain coal-mining operations) shall be without prejudice to so much of any licence under section 36 of that Act as has effect (with any modifications made in accordance with any provision made under paragraph 4(5) of Schedule 2 to this Act) as a contract between—
- (a) the person to whom it is granted; and
  - (b) the Corporation or, as the case may be, any person to whom the Corporation's rights and liabilities under the licence are transferred in accordance with a restructuring scheme.

*Repeal of section 41 of the 1946 Act*

- 7 The repeal by this Act of section 41 of the 1946 Act (certain coal industry trusts) shall be without prejudice to the continuing effect after the time when that repeal comes into force of any order made before that time under that section.

*Repeal of the Miners' Welfare Act 1952*

- 8 The repeal by this Act of the <sup>M141</sup>Miners' Welfare Act 1952 shall not affect the application in relation to any trusts of section 2 of the <sup>M142</sup>Recreational Charities Act 1958 (certain trusts for the purposes of welfare activities within the meaning of that Act of 1952 to be charitable).

**Marginal Citations**

M141 1952 c. 23.

M142 1958 c. 17.

*Opencast coal*

- 9 (1) Where any compulsory rights order has been made under the <sup>M143</sup>Opencast Coal Act 1958 before the restructuring date and is awaiting confirmation on that date, that

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order may be confirmed on or after that date in accordance with that Act as if it had been made by the Authority on the application of the Corporation.

- (2) The rights conferred on the Corporation by any compulsory rights order made under that Act before the restructuring date shall have effect on and after that date as if conferred on the Corporation and its successors (within the meaning of that Act) so as to be exercisable for the purposes only of—
  - (a) operations which the Corporation or, as the case may be, any such successor is authorised to carry out by virtue of being a licensed operator; and
  - (b) operations which are incidental to operations falling within paragraph (a) above (including operations carried out at times when the authorisation for the operations falling within that paragraph is not in force).
- (3) Any application to the Secretary of State for an order under section 15 or 16 of that Act which is pending immediately before the restructuring date shall have effect on and after that date as if made to the Authority; and paragraph (aa) of section 15A(1) of that Act (additional matter to be included in notice of application) shall be disregarded for the purposes of any application to which this sub-paragraph applies.
- (4) An order made under section 15 of that Act before the restructuring date shall not require the confirmation of the Secretary of State.
- (5) The provisions of this Act modifying section 16 of that Act shall not affect the operation of that Act in relation to any order made under that section before the restructuring date.
- (6) On and after the restructuring date compensation payable under that Act shall be payable in respect of any compulsory rights order made before that date as if the Corporation were the person on whose application that order was made.

**Marginal Citations**

M143 1958 c. 69.

*Offshore coal adjacent to the Isle of Man*

- 10 (1) On and after the restructuring date the rights in relation to coal under the territorial sea adjacent to the Isle of Man which are vested in the Corporation by virtue of section 2(3) of the 1987 Act shall have effect as comprising the exclusive right of authorising—
  - (a) the carrying on of any coal-mining operations for the purpose of searching or boring for that coal; and
  - (b) the carrying on of any coal-mining operations consisting in the winning, working or getting of that coal, in the treatment of that coal in the strata for the purpose of winning any product of coal or in the winning, working or getting of any product of coal resulting from any such treatment of that coal.
- (2) Where, at any time on or after the restructuring date, there comes into force any Order in Council under section 1 of the 1987 Act for bringing any area outside the Isle of Man and the territorial sea adjacent to the Isle of Man within that territorial sea—
  - (a) the rights previously vested in the Authority under this Act in relation to coal in that area shall become exercisable for purposes other than those of the

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- rights of the United Kingdom mentioned in section 1 of the <sup>M144</sup>Continental Shelf Act 1964; and
- (b) those rights shall continue to be vested in the Authority except so far as the Order in Council provides for them to vest at that time in another person.
- (3) The rights in relation to coal under the territorial sea adjacent to the Isle of Man which—
- (a) by virtue of section 2(3) of the 1987 Act, are vested in the Corporation immediately before the restructuring date, or
- (b) are rights to which sub-paragraph (2) above has applied on the subsequent coming into force of an Order in Council under section 1 of that Act,
- may at any time be surrendered by the person in whom they are vested (whether as mentioned in this paragraph or in accordance with a restructuring scheme) to, or to a person nominated by, the Government of the Isle of Man, and such a surrender shall be on such terms as may be agreed between that Government and the person making the surrender.
- (4) The rights mentioned in sub-paragraph (3) above shall be extinguished if at any time on or after the restructuring date they vest in or are surrendered to the person with the interests and rights of an owner in and in relation to the coal in question.
- (5) In this paragraph “the 1987 Act” means the <sup>M145</sup>Territorial Sea Act 1987, as extended to the Isle of Man by the <sup>M146</sup>Territorial Sea Act 1987 (Isle of Man) Order 1991.

**Marginal Citations**

**M144** 1964 c. 29.

**M145** 1987 c. 49.

**M146** S.I. 1991/1722.

*Coal industry trusts and other social welfare bodies*

- 11 The repeal by this Act of section 6 of the <sup>M147</sup>Coal Industry Act 1987 (coal industry trusts and other social welfare bodies) shall be without prejudice to the continuing effect after the time when that repeal comes into force of any order made before that time under that section.

**Marginal Citations**

**M147** 1987 c. 3.

*Interests affected by planning proposals: blight*

- 12 (1) The repeals made by this Act in paragraph 1(a)(i) of Schedule 13 to the <sup>M148</sup>Town and Country Planning Act 1990 and section 181(1)(a) of the <sup>M149</sup>Town and Country Planning (Scotland) Act 1972 (land to which the provisions of those Acts relating to blight notices apply) shall not affect the operation of those Acts on and after the restructuring date in relation to any blight notice served on the Corporation before that date or to anything done in relation to such a notice.

*Status:* Point in time view as at 22/08/1996. This version of this Act contains provisions that are not valid for this point in time.

*Changes to legislation:* There are currently no known outstanding effects for the Coal Industry Act 1994. (See end of Document for details)

- (2) In this paragraph, “blight notice” means a blight notice within the meaning of Chapter II of Part VI of that Act of 1990 or sections 181 to 196 of that Act of 1972.

**Marginal Citations**

M148 1990 c. 8.

M149 1972 c. 52.

*Subsidence*

- 13 (1) Without prejudice to section 1(2) of the 1991 Act, the repeal by this Act of subsection (7) of section 34 of that Act (restriction of remedial obligation in relation to buildings etc. of which no notice was given) shall remove the restriction imposed by that subsection in relation to any remedial obligation which first arose before the restructuring date except where before that date either—
- (a) that obligation was discharged; or
  - (b) terms of settlement in respect of any claim relating to that obligation were finally agreed or determined.
- (2) Without prejudice to section 37(4) of the 1991 Act (saving for agreements), the provisions of this Act and of that Act relating to any person who is the responsible person in relation to any subsidence damage, or who would be the responsible person if any such damage occurred, shall not affect any rights or obligations in connection with that damage which arise—
- (a) under or in pursuance of a restructuring scheme,
  - (b) under or in pursuance of the conditions of any licence under Part II of this Act, or
  - (c) apart from this Act,
- as between different persons who are or have at any time been licensed operators, or as between the Authority and any one or more such persons.
- (3) Without prejudice to any power conferred by section 13 of the <sup>M150</sup>Interpretation Act 1978 (anticipatory exercise of powers), subordinate legislation which—
- (a) is made before the restructuring date under any power contained in the 1991 Act and after any such consultation as may be required for any exercise of that power before that date, and
  - (b) is made so as not to come into force until on or after that date,
- may contain any such provision as may be contained in any subordinate legislation made on or after that date in exercise of that power as amended by this Act.

**Marginal Citations**

M150 1978 c. 30.

*Status:* Point in time view as at 22/08/1996. This version of this Act contains provisions that are not valid for this point in time.

*Changes to legislation:* There are currently no known outstanding effects for the Coal Industry Act 1994. (See end of Document for details)

## SCHEDULE 11

Section 67.

## REPEALS

## PART I

## REPEALS COMING INTO FORCE ON THE PASSING OF THIS ACT

Chapter	Short title	Extent of repeal
9 & 10 Geo 6. c. 59.	The Coal Industry Nationalisation Act 1946.	In section 36(2)—  (a) in paragraph (a), the words from “with respect to which” to “150”; and  (b) in paragraph (c), the words from “where” to “250,000 tonnes”.
1977 c. 39.	The Coal Industry Act 1977.	In Schedule 4, paragraph 1(5).
1990 c. 3.	The Coal Industry Act 1990.	In section 4(1), paragraph (b) and the word “and” immediately preceding it.

## PART II

## REPEALS COMING INTO FORCE ON THE RESTRUCTURING DATE

Chapter	Short title	Extent of repeal
1 & 2 Geo. 6. c. 52.	The Coal Act 1938.	Section 3(2) and (4). Section 5. Section 6(2). Section 11. Sections 14 and 15. Section 17. Section 19. Sections 32 to 34. Sections 41 to 45. Schedule 2.
6 & 7 Geo. 6. c. 38.	The Coal Act 1943.	Sections 1 to 3.
9 & 10 Geo 6. c. 59.	The Coal Industry Nationalisation Act 1946.	In section 1, subsection (1) and, in subsection (2)(a), the words “to the exclusion (save

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		as in this Act provided) of any other person”.
		Section 3(1) to (3).
		Sections 5 to 9.
		Section 30.
		Section 36, so far as unrepealed.
9 & 10 Geo 6. c. 59.—(cont)	The Coal Industry Nationalisation Act 1946.—(cont)	Sections 38 and 39.
		Section 42.
		Section 44.
		Section 48.
		Section 53.
		Schedules 1 and 2.
		Schedule 3.
12 & 13 Geo. 6. c. 53.	The Coal Industry Act 1949.	Section 5.
2 & 3 Eliz. 2. c. 56.	The Landlord and Tenant Act 1954.	In section 69(1), in the definition of “statutory undertakers”, the words from “except that” to the end.
6 & 7 Eliz. 2. c. 69.	The Opencast Coal Act 1958.	Section 3. Section 4(8). Section 13. In section 15A— (a) in subsection (1), paragraph (c) and the word “and” immediately preceding it; (b) subsection (6); and (c) in subsection (9), the word “Corporation’s”. Section 16(9). In section 17(1) and (3), the words “by the Corporation”. In section 26(3), the words “by the Corporation”. In section 31(2), the words “from the Corporation”.

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		In section 32(2), the words “from the Corporation”.
		In section 35(7), the words “by the Corporation”.
		In section 43, the words “by the Corporation”, wherever occurring.
		In section 44(3), the words “by the Corporation”.
		Section 46(1).
		In section 51(1), the definition of “the Corporation”.
		In Schedule 2—
		(a) in paragraph 1(1)(c), the words “on the Corporation”; and
		(b) paragraph 12.
		In Schedule 8—
		(a) in paragraphs 4 and 6(3), the words “by the Corporation”; and
		(b) in paragraphs 5(1) and 7(a) and (b), the words “from the Corporation”.
1964 c. 29.	The Continental Shelf Act 1964.	Section 1(2).
1965 c. 82.	The Coal Industry Act 1965.	Section 2(3).
1966 c. 4.	The Mines (Working Facilities and Support) Act 1966.	In section 1—
		(a) in paragraph 1 of the Table, the words “coal and”; and
		(b) paragraph 3 of the Table.
		In section 9, the words “and the British Coal Corporation”.
		In Schedule 2, paragraph 2.
1966 c. 47.	The National Coal Board (Additional Powers) Act 1966.	The whole Act.



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1967 c. 1.	The Land Commission Act 1967.	Section 58(5) and (6).  Section 89(7).  In Schedule 5, in paragraph 10(2)(c), the words from “or the chargeable interest” to the end.
1971 c. 16.	The Coal Industry Act 1971.	Section 6.  In section 7, subsections (1) to (6) and (8).
1972 c. 52	The Town and Country Planning (Scotland) Act 1972.	In section 181(1)(a), the words “or of the British Coal Corporation”.  In section 205(2)(a), the words “or the British Coal Corporation”.
1974 c. 40.	The Control of Pollution Act 1974.	Section 25.
1975 c. 56.	The Coal Industry Act 1975.	In section 2, subsections (1) to (3), (5) and (6) and (8) to (10).  Section 3.  In Schedule 1, paragraph 5.  Schedule 2.
1975 c. 70.	The Welsh Development Agency Act 1975.	In section 27(1), in paragraph (b) of the definition of “statutory undertakers”, the words “the British Coal Corporation”.
1976 c. 75.	The Development of Rural Wales Act 1976.	In section 34(1), in paragraph (b) of the definition of “statutory undertakers”, the words “the British Coal Corporation”.
1976 c. 75.—(cont)	The Development of Rural Wales Act 1976.—(cont)	In the Table in paragraph 56(3) of Schedule 3, paragraph 8.
1977 c. 39.	The Coal Industry Act 1977.	In section 9—  (a) subsections (1) to (4); and  (b) in subsection (5), the words “this section and”.  Section 11(7).

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**Changes to legislation:** There are currently no known outstanding effects for the Coal Industry Act 1994. (See end of Document for details)

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1979 c. 46.	The Ancient Monuments and Archaeological Areas Act 1979.	In section 61(2)(b), the words “the British Coal Corporation”.
1980 c. 65.	The Local Government, Planning and Land Act 1980.	In section 108(1), in paragraph (b) of the definition of “statutory undertakers”, the words “the British Coal Corporation”.  In section 120(3), in paragraph (b) of the definition of “statutory undertakers”, the words “the British Coal Corporation”.  In section 170(1), in paragraph (b) of the definition of “statutory undertakers”, the words “the British Coal Corporation”.
1980 c. 66.	The Highways Act 1980.	In section 290(7), the words “the British Coal Corporation, or”.
1981 c. 67.	The Acquisition of Land Act 1981.	In section 17(4), paragraph (a) of the definition of “statutory undertakers” and, in paragraph (b) of that definition, the word “other”.  In section 29(2)(c), the words “on the British Coal Corporation”.
1982 c. 45.	The Civic Government (Scotland) Act 1982.	In section 123(1), in the definition of “statutory undertakers”, the words “the British Coal Corporation”.
1984 c. 54.	The Roads (Scotland) Act 1984.	In section 140(4), the words “or the British Coal Corporation”.  In Schedule 9, paragraphs 31 and 49.
1985 c. 27.	The Coal Industry Act 1985.	Section 1.
1985 c. 72.	The Weights and Measures Act 1985.	In Schedule 5, in paragraph 28, sub-paragraphs (1) and (3) and in sub-paragraph (2) the words from “other than” to “applies”.

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**Changes to legislation:** There are currently no known outstanding effects for the Coal Industry Act 1994. (See end of Document for details)

1986 c. 5.	The Agricultural Holdings Act 1986.	In Schedule 3, in paragraph 8(1), sub-paragraph (a).
1986 c. 44.	The Gas Act 1986.	In Schedule 7, paragraph 22.
1986 c. 63.	The Housing and Planning Act 1986.	In Schedule 8—  (a) paragraphs 1 and 4; and (b) in paragraph 12, sub-paragraph (b) and the word “and” immediately preceding it.
1987 c. 3.	The Coal Industry Act 1987.	Section 2. In Schedule 1— (a) in paragraph 1(3), the words “30”, “36” and “38(2)” and the words from “and in” to “occurs” and in paragraph 1(4), the word “30”; (b) paragraphs 4, 7 and 10; (c) in paragraph 11(2), the words “, 2(3)” and “and 2(3)”; (d) paragraphs 12 and 15; (e) in paragraph 18(1), the word “6”; (f) in paragraph 20, the words “181(1)(a), 205(2)”; (g) paragraph 23; (h) in paragraph 28(2), the words from “2(5)” to “section 3(8)”; (i) paragraphs 29, 31 and 33; (j) in paragraph 34(1), the word “9”; and (k) paragraphs 35, 38 to 40, 43, 46, 48 and 49.
1987 c. 49.	The Territorial Sea Act 1987.	Section 2(3).
1988 c. 50.	The Housing Act 1988.	In Schedule 9, in paragraph 4(b) of Part I, the words “the British Coal Corporation”.
1989 c. 15.	The Water Act 1989.	In Schedule 25—

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**Changes to legislation:** There are currently no known outstanding effects for the Coal Industry Act 1994. (See end of Document for details)

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		(a) in paragraph 26, sub-paragraphs (1)(b) and (3); and (b) paragraph 50.
1989 c. 29.	The Electricity Act 1989.	In Schedule 16, paragraph 1(1)(iii).
1990 c. 3.	The Coal Industry Act 1990.	Section 4, so far as unrepealed. Section 5. Section 6(2).
1990 c. 8.	The Town and Country Planning Act 1990.	In section 253(2)(a), the words “or the British Coal Corporation”. In Schedule 13, in paragraph 1(a)(i), the words “or of the British Coal Corporation”.
1990 c. 9.	The Planning (Listed Buildings and Conservation Areas) Act 1990.	Section 85.
1990 c. 11.	The Planning (Consequential Provisions) Act 1990.	In Schedule 2, paragraphs 5(a) and 33.
1991 c. 45.	The Coal Mining Subsidence Act 1991.	In section 10(2)(c), the words “to the Corporation”. In section 16— (a) in subsection (1)(b), the words “to the Corporation”; and (b) in subsection (7), the words “to the Corporation” and the words “to them”, wherever they occur. In section 17(1)(a), the words “to the Corporation”. In section 30— (a) in subsection (1)(b), the words “by the Corporation”; and (b) in subsection (7), in the definition of “consequential loss”, the words “or 34(4) or (7)”. In section 31(2)(b), the words “by the Corporation”.

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**Changes to legislation:** There are currently no known outstanding effects for the Coal Industry Act 1994. (See end of Document for details)

1991 c. 45.—(cont)	The Coal Mining Subsidence Act 1991.—(cont)	<p>In section 33(1), the words “to the Corporation”.</p> <p>Sections 34 and 35.</p> <p>Section 39.</p> <p>Section 43.</p> <p>Section 45.</p> <p>Section 46(2).</p> <p>Section 47(3).</p> <p>Section 48.</p> <p>In Schedule 2, in paragraph 1(1), the words “the Corporation are satisfied that”.</p>
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### PART III

#### REPEALS COMING INTO FORCE ON AN APPOINTED DAY

#### Commencement Information

- I17** Sch. 11 Pt. 3 in force for specified purposes at 31.10.1994 and at 1.11.1994 by [S.I. 1994/2552](#), [arts. 2, 3](#), [Schs. 1, 2](#) and Appendices
- I18** Sch. 11 Pt. 3 in force for specified purposes at 24.12.1994 by [S.I. 1994/3063](#), [art. 2](#), [Sch.](#)
- I19** Sch. 11 Pt. 3 in force for specified purposes at 1.3.1995 by [S.I. 1995/273](#), [art. 2](#), [Sch.](#)

Chapter	Short title	Extent of repeal
1 & 2 Geo. 6. c. 52.	The Coal Act 1938.	Sections 52 to 55 Section 58.
6 & 7 Geo. 6. c. 38.	The Coal Act 1943.	Section 14. Sections 17 and 18.
9 & 10 Geo 6. c. 59.	The Coal Industry Nationalisation Act 1946.	In section 2—  (a) in subsection (2), the words “less than eight nor”; (b) in subsection (3), the words from “from amongst” onwards; and (c) subsection (5). Section 4. Sections 27 and 28.

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**Changes to legislation:** There are currently no known outstanding effects for the Coal Industry Act 1994. (See end of Document for details)

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		Section 34(1).
		Section 35.
		Section 37.
		Section 41.
		Section 45.
		Section 52.
		Sections 55 to 65.
		Schedule 2A.
12 & 13 Geo. 6. c. 53.	The Coal Industry Act 1949.	Section 1(2) and (4). Section 4. Sections 7 and 8. Section 13.
15 & 16 Geo. 6 & 1 Eliz. 2. c. 23.	The Miners' Welfare Act 1952.	The whole Act.
6 & 7 Eliz. 2. c. 69.	The Opencast Coal Act 1958.	Section 17(4). Sections 19 and 20. In Schedule 6, paragraphs 3, 7, 12 and 22.
10 & 11 Eliz. 2. c. 22.	The Coal Consumers' Councils (Northern Irish Interests) Act 1962.	The whole Act.
11 Eliz. 2 c. 6.	The Coal Industry Act 1962.	Sections 1 and 2. Section 4.
1965 c. 82.	The Coal Industry Act 1965.	Section 1. Section 4(1). Section 5. Schedule 1.
1967 c. 1.	The Land Commission Act 1967.	In section 14, subsection (5).  In section 15, subsection (5).
1967 c. 91.	The Coal Industry Act 1967.	Section 4. Sections 7 and 8.
1968 c. 13.	The National Loans Act 1968.	In Schedule 1, the entries relating to sections 28(1)(b) and (2) and 34(1) of the Coal Industry Nationalisation Act 1946.

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**Changes to legislation:** There are currently no known outstanding effects for the Coal Industry Act 1994. (See end of Document for details)

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1970 c. 44.	The Chronically Sick and Disabled Persons Act 1970.	In section 14(1), the words “and the Domestic Coal Consumers’ Council”.
1971 c. 16.	The Coal Industry Act 1971.	Section 4. Sections 9 and 10.
1972 c. 52.	The Town and Country Planning (Scotland) Act 1972.	Section 251(3)(b). Section 259.
1973 c. 8.	The Coal Industry Act 1973.	Section 2. Section 10. In Schedule 1, paragraphs 2 to 3.
1975 c. 55.	The Statutory Corporations (Financial Provisions) Act 1975.	In Schedule 2, the entry relating to the British Coal Corporation. In Schedule 4, paragraph 2.
1976 c. 1.	The National Coal Board (Finance) Act 1976.	Section 2. Section 4.
1977 c. 39.	The Coal Industry Act 1977.	Section 1. Section 7. Section 11(1). Section 12(1) and (2). Sections 13 to 16. Schedule 1. Schedule 3. In Schedule 4, paragraphs 1(1) and (7), 2 and 3. Schedule 5.
1980 c. 50.	The Coal Industry Act 1980.	Sections 1 and 2. Section 7. Sections 9 to 11.
1982 c. 15.	The Coal Industry Act 1982.	Section 3. Sections 5 and 6.
1983 c. 29.	The Miscellaneous Financial Provisions Act 1983.	In Schedule 2, the entry relating to the Coal Industry Nationalisation Act 1946.
1983 c. 60.	The Coal Industry Act 1983.	Sections 1 and 2.

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**Changes to legislation:** There are currently no known outstanding effects for the Coal Industry Act 1994. (See end of Document for details)

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		Sections 4 to 6.
		The Schedule.
1985 c. 9.	The Companies Consolidation (Consequential Provisions) Act 1985.	In Schedule 2, the entries relating to the Coal Industry Act 1965, the Coal Industry Act 1971 and the Coal Industry Act 1977.
1985 c. 27.	The Coal Industry Act 1985.	Sections 3 to 5.
1986 c. 63.	The Housing and Planning Act 1986.	In Schedule 8, paragraph 8.
1987 c. 3.	The Coal Industry Act 1987.	Sections 3 and 4. Sections 6 to 9. In section 10, subsections (2) and (3) and in subsection (4), the words from “except” onwards. In Schedule 1— (a) in paragraph 1(3), the words “4”, “27”, “28”, “37”, “and 64(9)” and “and Schedule 2A to”, and in paragraph 1(4), the words “37”; (b) paragraphs 3, 8, and 9; (c) in paragraph 11, subparagraph (1) and in subparagraph (2), the words “1(2) to (6) and” and the words from “and in” to the end; (d) paragraphs 16 and 17; (e) in paragraph 18, in subparagraph (1) the words “4” and “and 9”, and subparagraph (2); (f) paragraph 20, so far as unrepealed; (g) paragraphs 21, 27 and 30; (h) in paragraph 34, in subparagraph (1), the word “7”, in subparagraph (2) the words “for the word “Board’s” in subsection (1)



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**Changes to legislation:** There are currently no known outstanding effects for the Coal Industry Act 1994. (See end of Document for details)

		and”, and sub-paragraph (3); and (i) paragraphs 36 and 41. Schedules 2 and 3.
1989 c. 29.	The Electricity Act 1989.	In section 57(2) the word “or” at the end of paragraph (b)(ix).
1989 c. 40.	The Companies Act 1989.	In Schedule 18, paragraphs 1 and 18.
1990 c. 3.	The Coal Industry Act 1990.	Sections 1 and 3. Section 6, so far as unrepealed.
1990 c. 8.	The Town and Country Planning Act 1990.	In section 315(4), paragraph (b) and the word “or” immediately preceding it. Section 317.
1991 c. 45.	The Coal Mining Subsidence Act 1991.	Section 49(4).
1992 c. 17.	The Coal Industry Act 1992.	The whole Act.
1993 c. 2.	The British Coal and British Rail (Transfer Proposals) Act 1993.	The whole Act.

VALID FROM 27/03/2004

#### PART IV

##### REPEALS COMING INTO FORCE ON THE DISSOLUTION DATE

Chapter	Short title	Extent of repeal
9 & 10 Geo. 6. c. 59.	The Coal Industry Nationalisation Act 1946.	Sections 1 and 2, so far as unrepealed. Section 3(4). Section 29. Sections 31 to 33. Sections 46 and 47. Section 49(3) and (4). Section 54.

**Status:** Point in time view as at 22/08/1996. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** There are currently no known outstanding effects for the Coal Industry Act 1994. (See end of Document for details)

12 & 13 Geo. 6. c. 53.	The Coal Industry Act 1949.	Section 1, so far as unrepealed.
9 & 10 Eliz. 2. c 64.	The Public Health Act 1961.	In Schedule 4, in the Table, the reference to the British Coal Corporation.
1965 c. 82.	The Coal Industry Act 1965.	Section 4(2).
1968 c. 13.	The National Loans Act 1968.	In Schedule 5, the entry relating to the Coal Industry Nationalisation Act 1946.
1971 c. 16.	The Coal Industry Act 1971.	Section 7, so far as unrepealed. Section 8.
1973 c. 8.	The Coal Industry Act 1973.	Section 1. Sections 11 to 14. In Schedule 1, paragraph 1. Schedule 2.
1975 c. 24.	The House of Commons Disqualification Act 1975.	In Part II of Schedule 1, the entry relating to the British Coal Corporation.
1975 c. 25.	The Northern Ireland Assembly Disqualification Act 1975.	In Part II of Schedule 1, the entry relating to the British Coal Corporation.
1975 c. 56.	The Coal Industry Act 1975.	Section 1.
1977 c. 39.	The Coal Industry Act 1977.	Section 9(5), so far as unrepealed. Section 10. Section 11, so far as unrepealed. In Schedule 4, paragraph 1(2) to (4) and (6).
1980 c. 50.	The Coal Industry Act 1980.	Section 8.
1980 c. 63.	The Overseas Development and Co-operation Act 1980.	In section 2, subsections (4) and (5). In Part III of Schedule 1, the entry relating to the British Coal Corporation.
1983 c. 44.	The National Audit Act 1983.	In Part I of Schedule 4, the entry relating to the British Coal Corporation.
1984 c. 27.	The Road Traffic Regulation Act 1984.	In Schedule 5, in paragraph 3, in the first column, the

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**Changes to legislation:** There are currently no known outstanding effects for the Coal Industry Act 1994. (See end of Document for details)

1985 c. 9.	The Companies Consolidation (Consequential Provisions) Act 1985.	reference to the British Coal Corporation. In Schedule 2, the entry relating to the Coal Industry Act 1973.
1987 c. 3.	The Coal Industry Act 1987.	Section 1 and Schedule 1, so far as unrepealed, except in so far as they amend the Housing Act 1985.
1989 c. 40.	The Companies Act 1989.	In Schedule 10, paragraph 27. In Schedule 18, paragraph 10.
1993 c. 28.	The Leasehold Reform, Housing and Urban Development Act 1993.	In section 161(7), in paragraph (b) of the definition of “statutory undertakers”, the words “the British Coal Corporation”.

**Status:**

Point in time view as at 22/08/1996. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:**

There are currently no known outstanding effects for the Coal Industry Act 1994.