

SCHEDULES

SECOND SCHEDULE

Sections 4, 6, 43.

PROVISIONS FOR DEFINING PROPERTY AND RIGHTS WITH WHICH, AND MATTERS SUBJECT TO WHICH, COAL IS TO BE ACQUIRED.

PART I

General

- 1 The conveyance of any coal or mine of coal to be assumed for the purposes of section four of this Act shall be a conveyance, to which all persons having any interest other than a retained interest in that coal or mine are conveying parties, to a purchaser for money or money's worth with notice of all matters whereof notice is material, containing, in the cases mentioned in paragraph 2 of this Schedule provisions to the effect therein mentioned, but subject as aforesaid not containing any such term or provision as might have limited the application of section sixty-two or sixty-three of the ^{M1}Law of Property Act 1925, to the conveyance.

Marginal Citations

M1 1925 c. 20.

- 2 (1) In a case in which any of the conveying parties has, besides the interest in respect of which he is a conveying party, a retained interest in the coal or mine, he shall be deemed not to be a conveying party in respect of his retained interest.
- (2) In a case in which any of the the conveying parties has an interest in land that would be adversely affected by a surface servitude that the conveyance might include, or might operate to grant, for any interest, by virtue either—
- (a) of section sixty-two of the ^{M2}Law of Property Act 1925; or
 - (b) of any rule of law relating to the grant of servitudes as servitudes of necessity;
- the conveyance shall not operate further or otherwise, as regards the inclusion or the grant of that servitude or the interest (if any) for which it is to be included, than it would have operated if none of the conveying parties had had any interest in that land.
- (3) In a case in which any of the conveying parties has an interest in land to which a servitude that adversely affects the coal or mine is annexed, or with which the benefit of a restrictive covenant that adversely affects the coal or mine runs, the conveyance shall reserve that servitude for the greatest interest for which it could be reserved by that party, or shall reserve any right to enforce that covenant which

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would have subsisted in right of that party’s interest in land with which the benefit of that covenant runs if he had not been a conveying party, as the case may be.

- (4) In a case in which any of the conveying parties might, after the conveyance, be subject to any personal liability in respect of a restrictive covenant that adversely affects the coal or mine, the conveyance shall be deemed to contain a covenant entered into by the Commission with that party with the object and intent of affording to him and his successors in title a full and sufficient indemnity, but not further or otherwise, that the Commission will at all times after the vesting date duly perform and observe that restrictive covenant in relation to the coal or mine and will at all times keep that party and his successors in title effectually indemnified against all actions, proceedings, costs, charges, claims, and demands whatsoever in respect of that restrictive covenant.

Marginal Citations
M2 1925 c. 20.

- 3 A person having an interest vested in him without power to convey it, or having power to convey an interest with or on some consent, approval or request or on giving some notice, shall be deemed for the purposes of this Schedule to have had that power or to have received that consent, approval or request or to have given that notice, as the case may be.

PART II ^{F1}

Textual Amendments
F1 Sch. 2 Pt. II repealed with saving by Coal Industry Act 1975 (c. 56), s. 7(1), Sch. 5

PART III

Application to Scotland

- 8 This Schedule shall apply to Scotland, subject to the following modifications:—
 - (a) For paragraph 1 the following paragraph shall be substituted—

“1 The conveyance of any coal or mine of coal to be assumed for the purposes of section four of this Act shall be a conveyance in common form (including a clause of assignation of writs) duly recorded in the appropriate Register of Sasines and granted by all persons having any interest other than a retained interest in that coal or mine (each of such persons being assumed to be of full age and capacity) and conveying all their rights, titles and interests in and to the said coal or mine of coal, to the effect and intent of

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vesting the said coal or mine of coal absolutely in the Commission freed from all feudal prestations, and rights in security, if any, and subject only to the inherent right of superiority of the Crown:

Provided that, in the case of any coal or mine of coal which is held on a title comprising other subjects also, the conveyance to be assumed as aforesaid shall be deemed to contain a clause of assignation of writs to the effect only of enabling the Commission to maintain and defend their right to the coal or mine and, for that purpose, an obligation to make the writs forthcoming on a proper receipt and undertaking to redeliver.”

- (b) For sub-paragraph (2) of paragraph 2 the following sub-paragraph shall be substituted:—

“(2) In a case in which any of the conveying parties has an interest in land that would be adversely affected by a surface servitude that the conveyance might include or might operate to grant for any interest by virtue of any rule of law relating to the grant of implied servitudes or of servitudes of necessity, the conveyance shall not operate as regards the inclusion or the grant of that servitude further or otherwise than it would have operated if none of the conveying parties had had any interest in that land.”

- (c) . . . F2

Textual Amendments

F2 Para. 8(c) repealed with saving by [Coal Industry Act 1975 \(c. 56\), s. 7\(1\), Sch. 5](#)

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