



Railways Clauses Consolidation (Scotland) Act 1845

1845 CHAPTER 33 8 and 9 Vict

^{XI}*Working of mines*

72A Liability in respect of authorised workings.

(1) If a mine owner works any minerals lying under any part of the area of protection in the manner authorised by this Act, he shall nevertheless become liable on demand by the company (subject as herein-after provided) to contribute towards the expenses properly incurred, or to be incurred, by the company from time to time thereafter in making good any damage caused by such working to the railway or works of the company (not being protected works comprised in any counter-notice relating to such area of protection) the appropriate percentage (if any) of those expenses, the appropriate percentage being such as is specified in the First Schedule to this Act according to the depth of the minerals being so worked.

(2) The liability of a mine owner under this section in respect of any part of the railway or works on which such expenditure has been incurred shall not exceed an aggregate sum equivalent to [^{F1}2½p] for each ton of the commercially workable minerals, gotten or ungotten, in such part of any seams as lies under the area ascertained as respects the several seams in accordance with the rules contained in the Second Schedule to this Act, being seams which have been or are being worked under such area as aforesaid:

Provided that, in ascertaining such aggregate sum as aforesaid, minerals gotten more than six years before the date on which a contribution shall have been demanded by the company under this section shall not be reckoned.

(3) Any mine owner making a contribution under this section, who is a lessee, shall be entitled to deduct from any royalties then or thereafter becoming due from him to the royalty owner under the lease, one-third part of the amount which he has so contributed as aforesaid, subject, however, to this limitation: that if the royalty payable by the mine owner under his lease is at the rate of less than [^{F1}2½p] per ton, the amount deducted shall not exceed the amount produced by multiplying one-third of such rate per ton by the tonnage of the minerals with reference to the aggregate amount of which the

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maximum liability of the mine owner is to be so calculated as aforesaid; and, where the mine owner is entitled to make such a deduction, the sum reserved by and payable under the lease shall be deemed to be the next amount arrived at after making the deduction:

Provided that no such deduction shall be allowed when the liability of the mine owner to the company is a liability arising out of an arrangement between the mine owner and the company with respect to the working of minerals under or near the railway or works.

- (4) The liability of a mine owner under this section shall be subject to the following further limitation as respects damage done by workings in any single mine, that is to say, that when the aggregate of the sums paid by the mine owner in satisfaction of such liability amounts to a sum equivalent to [^{F1}2½p] for each ton of commercially workable minerals, gotten or ungotten, in such part of any seams as lies within the mines and under an area extending laterally on both sides of the railway or works to a distance ascertained in accordance with Rule 1 of the said Second Schedule and extending longitudinally to a distance co-extensive with the portion of the railway lying over or adjacent to the mine, being seams which have been or are being worked under such area as aforesaid, the mine owner shall not be liable to make any further contribution under this section towards the expenses of making good any damage caused to any part of the railway or works by the working of such seams as aforesaid in that mine.

For the purposes of this provision, all the minerals which the mine owner is entitled to work, and which have been, or would in the ordinary course of events and in accordance with good mining practice be, worked from the same shafts or adits shall be deemed to be a single mine.

Where the liability of a mine owner under sub-section (2) of this section is reduced by the operation of this sub-section, the right of the mine owner under sub-section (3) thereof to make deductions from royalties shall be proportionately reduced.

- (5) Where a single mine, as herein-before defined, is held under leases granted by more than one lessor, any deductions which the mine owner is authorised under this section to make shall be made from the royalties payable to such one or more of such lessors, and in the latter case in such proportions, as in default of agreement may, on the application of the mine owner or any of the royalty owners, be determined by arbitration.
- (6) If any dispute arises as to the amount of the expenses towards which a mine owner is liable to contribute under this section, or the amount of his contribution, or the amount to be deducted as between a mine owner and a royalty owner, it shall be settled by arbitration, and, where any such arbitration between a company and a mine owner is to be held, the royalty owner (if any) shall be entitled to have notice of the intended arbitration, and to appear and be heard at the arbitration proceedings.

Textual Amendments

F1 Words substituted by virtue of [Decimal Currency Act 1969 \(c. 19\), s. 10\(1\)](#)

Modifications etc. (not altering text)

C1 S. 72A incorporated (S.) (27.5.1997) by [1997 c. 8, ss. 188\(2\), 278\(2\)](#)
 S. 72A applied (with modifications) (S.) (27.5.1997) by [1997 c. 9, ss. 47\(2\)\(3\), 83\(2\)](#) (with [s. 45\(4\)](#))
 S. 72A incorporated (S.) (17.7.1995) by [1994 c. 39, s. 98\(2\)\(a\)](#); S.I. 1995/1898, [art. 2](#)

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| <p>C2 Ss. 70–76 applied by Enterprise and New Towns (Scotland) Act 1990 (c. 35, SIF 64), s. 36(3)</p> <p>C3 S. 72A amended by Coal Industry Nationalisation Act 1946 (c. 59), ss. 48(1)(c), 64(7)</p> |
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