



# Coal Act 1938

## 1938 CHAPTER 52

### PART I

#### UNIFICATION OF COAL MINING ROYALTIES

##### *Application and interpretation of Part I*

#### **41 Application of Part I to registered land**

This Part of this Act shall have effect in relation to premises that are registered land within the meaning of the Land Registration Act, 1925, as if they had not been registered land, and all rights and title conferred on the Commission by this Part of this Act shall be overriding interests within the meaning of that Act.

#### **42 Application of Part I to the Crown and the Duchy of Cornwall**

- (1) This Part of this Act binds the Crown and shall accordingly apply to land belonging to His Majesty or forming part of the possessions of the Duchy of Cornwall, or belonging to a Government department or held in trust for His Majesty for the purposes of a Government department:

Provided that paragraph (b) of subsection (4) of section three of this Act shall not bind the Crown as regards gold, gold ore, silver or silver ore, and accordingly the expression "coal" in this Part of this Act shall not in any case include those minerals or substances.

- (2) In the application of the provisions of the Third Schedule to this Act that relate to the payment and disposal of compensation payable under section six of this Act to holdings that consist of or comprise interests in land specified in the preceding subsection, those provisions shall have effect subject to the following modifications, that is to say, that the persons entitled to the compensation for such holdings shall be the persons specified in the second column of the Table set out at the end of that Schedule in the case of holdings consisting of or comprising interests in the lands respectively specified in the first column of that Table, and those persons shall, notwithstanding

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anything in any other enactment, dispose of the principal sums and interest attributable to such interests in the manner specified in the third column of that Table.

- (3) In this section and in the said Table, " possessions of the Duchy of Cornwall " has the meaning assigned to it by section thirty-seven of the Duchy of Cornwall Management Act, 1863, and " private estates of His Majesty " has the meaning assigned to it by section one of the Crown Private Estates Act, 1862.

#### **43 Application of Part I to Forest of Dean**

- (1) This Part of this Act shall have effect in its application to land in the Forest of Dean or in any other part of the Hundred of Saint Briavels in the county of Gloucester, being land in respect of which the privileges of free miners are exercisable, subject to the following modifications.
- (2) The provisions of subsections (1) to (3) of section three, and sections four and five, of this Act, and the Second Schedule to this Act, shall not have effect, but this Part of this Act shall have effect as if for the said provisions there had been substituted the following provision, that is to say, on the vesting date the interest of the Forestry Commissioners in the coal and mines of coal comprised in the said land shall vest in the Commission, subject to and in accordance with the provisions of the Dean Forest (Mines) Act, 1838, and of any other enactment relating to the said land (in this section referred to as " the Dean Forest enactments " ) and to all interests subsisting or to be created under or by virtue thereof.
- (3) In the application of sections six and seven of this Act, and of the Third Schedule to this Act, to the coal and mines of coal comprised in the said land, the interest therein subsisting in the Forestry Commissioners at the valuation date, and no other interest, shall be treated as an acquired interest, and provision shall be made by rules made by the Board of Trade under the power in that behalf conferred upon them by the Third Schedule to this Act for treating the said interest as constituting a unit for compensation purposes and (in substitution for the provisions of that Schedule relating to registration under the Registration Act and the notification to the Regional Valuation Board of such registration) for the notification to that Board by the Forestry Commissioners of particulars thereof, and the Forestry Commissioners shall be the persons entitled to the compensation therefor.
- (4) Sections eight to thirteen, subsections (1) to (3) of section fourteen and section nineteen of this Act, and the Fourth and Fifth Schedules to this Act, shall not have effect.
- (5) References to coal shall not be construed as including references to minerals or substances that are subsidiary coal hereditaments within the meaning of section six of this Act.
- (6) All powers conferred by the Dean Forest enactments that were vested in the Forestry Commissioners immediately before the vesting date shall continue to be exercisable by them notwithstanding the vesting in the Commission of the said interest, and accordingly—
- (a) rent attributable to the said interest shall continue to be recoverable by the Forestry Commissioners until other provision in that behalf is made under the next succeeding subsection, but they shall pay to the Commission all such rent recovered by them that accrues after the vesting date; and

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- (b) the Commission shall pay to the Forestry Commissioners sums equal to such part of the expenses incurred by them in exercising the said powers after the vesting date as are attributable to the management of the said interest.

Any difference arising between the Commission and the Forestry Commissioners as to the amount of the rent, or of the expenses, to be paid under this subsection shall be determined by the Treasury.

- (7) His Majesty may by Order in Council make provision for vesting in the Commission any of the powers conferred by the Dean Forest enactments that were vested in the Forestry Commissioners immediately before the vesting date in so far as they relate to coal or mines of coal, and any such order may make provision for any requisite modification of the Dean Forest enactments.

The Board of Trade shall lay before Parliament the draft of any Order which it is proposed to recommend His Majesty in Council to make under this subsection, and no further proceedings shall be taken in relation thereto except in pursuance of an Address presented to His Majesty by both Houses of Parliament praying that the Order may be made in the terms of the draft.

#### **44 Interpretation of Part I**

- (1) In this Part of this Act, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them respectively, that is to say :—

" Acquired interest " has the meaning assigned to it by subsection (1) of section seven of this Act;

" Acquired property and rights " has the meaning assigned to it by subsection (1) of section four of this Act;

" Claiming under " shall be construed, in relation to a person referred to as claiming under the estate owner in respect of the fee simple, or under the estate owner in respect of a term of years, in any land, as referring to any person interested in that land in respect of—

- (a) any equitable interest enforceable against that estate owner (other than an equitable term of years under a coal-mining lease or an interest created out of such a term of years),
- (b) a legal mortgage, or charge by way of legal mortgage, of that fee simple or of that term of years, as the case may be,
- (c) a rentcharge in possession which confers a right to take the income incident to that fee simple or to that term of years, as the case may be, or
- (d) a term of years under a lease, other than a coal-mining lease, which is derived out of that fee simple or of that term of years, as the case may be (either immediately or by way of under-lease derived out of a lease other than a coal-mining lease), or an interest created out of such a term of years;

" Coal " has the meaning assigned to it by subsection (4) of section three of this Act;

" Coal-mining lease " means in relation to any coal a lease that confers a right to work and carry away that coal, and means in relation to any mine of coal a lease that confers a right to use it for a coal-mining purpose;

" Coal-mining purpose " means searching and boring for, winning, working, getting, carrying away, making merchantable or disposing of, coal;

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" Existing owners " means, in relation to any coal or mine of coal, all persons who have at the valuation date an acquired interest therein;

" Interested " shall be construed, in relation to a person referred to as interested in any coal or mine of coal, or in any other land, as referring to any person entitled to, or to exercise, or interested in, or in the exercise of, any estate, interest, charge or power (including an option or right of pre-emption, and including a contingent executory or future interest or a possibility coupled with an interest whether or not the object of the gift or limitation of such interest or possibility be ascertained) in, on or over that coal or mine or that other land, as the case may be, or in, on or over the rents and profits thereof, otherwise than in respect only of the benefit of a servitude or restrictive covenant adversely affecting that coal or mine or that other land, as the case may be, and " interest " has a corresponding meaning;

" Interim period " means the period between the valuation date and the vesting date;

" Lease " includes an under-lease, a tenancy and an agreement for a lease, under-lease, or tenancy (but not an option to take a lease, underlease, or tenancy), and in relation to such an agreement the expressions " term of years " and " estate owner " mean respectively the term agreed to be created and the person entitled to have that term vested in him; " lease " and " under-lease " each include a licence (whether personal or by way of profit a prendre) that confers a right to work and carry away coal or a right to use a mine of coal for a coal-mining purpose, and in relation to a licence the expressions " rent," " reversion," " term of years " and other expressions importing a reference to a lease shall be construed accordingly with the requisite adaptations; neither " lease " nor " under-lease " includes a mortgage;

" Mine of coal " means a space which is occupied by coal or which has been excavated underground for a coal-mining purpose, and includes a shaft and an adit made for a coal-mining purpose;

" Mortgage " includes any charge or lien on any property for securing money or money's worth;

" Prescribed " means prescribed by rules made by the Board of Trade;

" Registration Act " means the Coal (Registration of Ownership) Act, 1937;

" Rent " includes yearly or other rent, and any toll, duty, royalty, or other annual or periodical payment in the nature of rent, whether payable in money or money's worth or otherwise, but does not include mortgage interest;

" Retained interest " has the meaning assigned to it by section five of this Act;

" Servitude " means any liberty, privilege, easement, right or advantage annexed to any land and adversely affecting other land; " surface servitude " means any servitude annexed to coal or a mine of coal in so far as it adversely affects the surface of any land (with the exception of a right to withdraw support); and "annexed to" means, in relation to any coal or mine of coal, or to any other land, appertaining or reputed to appertain thereto or to any part thereof, or demised, occupied, or enjoyed therewith or with any part thereof, or reputed or known as part or parcel thereof or appurtenant thereto or to any part thereof;

" Working facilities order " means an order of the Railway and Canal Commission under the Mines (Working Facilities and Support) Act, 1923, either as originally enacted or as extended by section thirteen of the Mining Industry Act, 1926.

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- (2) For the purposes of this Part of this Act, a person shall not be deemed to be carrying on the business of coal mining unless a substantial part of his business consists of working, getting, and carrying away coal.
- (3) Unless the context otherwise requires, references in this Part of this Act to any enactment shall be construed as references to that enactment as amended by any subsequent enactment, including this Act.

#### **45 Application of Part I to Scotland**

- (1) The provisions of this section shall have effect for the purpose of the application of this Part of this Act to Scotland.
- (2) " Covenant " means agreement or stipulation and " restrictive covenant " shall be construed accordingly and shall include a real burden *ad factum prmsandum* ; " fee simple " and " freehold interest " mean the estate or interest of the proprietor of the dominium utile; "demised" means let; " sub-demised" means sub-let; " under-lease " and " sub-demise " mean sub-lease; any reference to a lease or an under-lease derived out of another lease shall be construed as a reference to a sublease granted by a superior lessee; " mortgage " means a heritable security and " mortgagee " and " mortgagor " respectively mean the creditor and the debtor in a heritable security; "chattel" means corporeal moveable; "condition of re-entry" means power to bring a lease to an end or to resume possession; " leasehold interest" means the interest of the lessee in premises subject to a lease; any reference to a term of years shall be construed as a reference to the lessee's interest under a lease; references to a reversion or a reversionary interest or an immediate reversion or a reversion expectant on a lease shall be construed as references to the interest of the landlord in property subject to a lease, and the expression " reversioner " shall be construed accordingly; " freehold reversion " means the interest of the proprietor of the dominium utile in property subject to a lease, and " leasehold reversion " means the interest of a lessee of property who is the landlord under a sub-lease thereof; any reference to rent reserved under a lease shall be construed as a reference to rent payable under or stipulated for in a lease; any reference to a charge or power in, on or over any subjects shall include a reference to a heritable security affecting such subjects and any reference to a lease by parole shall be construed as a reference to a verbal lease.
- (3) The definition in section forty-four of this Act of the expression " claiming under" shall not apply and the expression " person claiming under " shall have the meaning assigned thereto by paragraph 3 of the First Schedule to the Registration Act.
- (4) " Heritable creditor " means the creditor in a heritable security, and " heritable security" means a heritable security within the meaning of the Conveyancing (Scotland) Act, 1924, exclusive of a real burden *ad factum prcestmidum* but inclusive of a security constituted by *ex facie* absolute disposition; "superior" includes the Crown (without prejudice to the Crown's inherent right of superiority over all land in Scotland) and a subject superior or mid-superior.
- (5) In this Act and in the Registration Act, any reference to the proprietor of the dominium utile shall as regards any coal or mine of coal in the undivided ownership of the Crown, be construed as a reference to the Crown.
- (6) For references to the Lands Clauses Consolidation Act, 1845, and to section eighty thereof there shall be substituted respectively references to the Lands Clauses Consolidation (Scotland) Act, 1845, and to section seventy-nine thereof; for references

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to the Railways Clauses Consolidation Act, 1845, and to sections seventy-eight to eighty-five thereof there shall be substituted respectively references to the Railways Clauses Consolidation (Scotland) Act, 1845, and to sections seventy-one to seventy-eight thereof; for any reference to the High Court there shall be substituted a reference to the Court of Session and for any reference to a receiver of the rents and profits of premises there shall be substituted a reference to a judicial factor.

- (7) Any question which is required in pursuance of this Act to be referred to arbitration shall be referred to a single arbiter agreed on by the parties or appointed in default of agreement by the Lord President of the Court of Session.
- (8) In any arbitration in pursuance of this Act, the arbiter may, and, if so directed by the Court of Session, shall, state a case for the opinion of that Court on any question of law arising in the arbitration.
- (9) Subsection (1) of section three of this Act shall have effect as if the words " the fee simple in " were omitted, and subsection (2) of that section shall have effect as if after the words " completion of the contract on " the words " and entry at " were inserted.
- (10) For subsection (3) of section three of this Act the following subsection shall be substituted:—
- “(3) On the vesting date all interests then subsisting in any coal or mine of coal other than retained interests shall vest in the Commission subject only to the inherent right of superiority of the Crown.”
- (11) Subsection (4) of section nine of this Act shall have effect as if for the words " so far as regards the title " for which the premises in question vest in the Com-" mission " there were substituted the words " so far as conflicting with the title of the Commission " .
- (12) Subsection (3) of section fourteen of this Act shall have effect as if all the words occurring after the words " copies thereof " were omitted.
- (13) Subsection (2) of section seventeen of this Act shall not apply, but no right adverse to the title to any coal or mine of coal given to the Commission by the vesting thereof in them by this Act shall be capable of being acquired by prescriptive possession.
- (14) For subsection (1) of section nineteen of this Act the following subsection shall be substituted :—
- “(1) On and after the valuation date it shall not be competent to grant a sub-lease of coal or a mine of coal:
- Provided that this subsection shall not apply to the grant of a sub-lease pursuant to a lease consolidation scheme made under section twelve of this Act or to minerals or substances that are subsidiary coal hereditaments within the meaning of section six of this Act.”
- (15) Subsection (3) of section nineteen of this Act shall not apply.
- (16) The aggregate of the values of (a) any coal or mine of coal and any property and rights vested in the Commission by virtue of this Act, and (b) any erections or structural improvements used exclusively for the purpose of working or cleaning such coal, entered in any Valuation Roll or Supplementary Valuation Roll for any period ending after the vesting date, shall not exceed the value or values at which such coal, mine of coal, property and rights and such erections or improvements would have been so entered if this Act had not passed, and, notwithstanding anything contained in

section six of the Lands Valuation (Scotland) Act, 1854, as amended by any subsequent enactment, no entry shall be made in any such roll in respect of erections or structural improvements used exclusively for the purpose of working or cleaning coal by reason only of the fact, that in consequence of the vesting of the coal in the Commission under this Act, the land on which the said erections or structural improvements are situated is not included in the lease of the coal.