



# Coal Act 1938

## 1938 CHAPTER 52

### PART I

#### UNIFICATION OF COAL MINING ROYALTIES

*Provisions supplemental to, and consequential on, unification*

#### **15 Powers of the Commission in relation to underground land other than coal**

In respect of any underground land not vested in them by virtue of this Part of this Act, the Commission shall themselves have the right, and shall have power to grant a licence to any person, to do any of the following acts in the course of operations carried on for coalmining purposes on or after the vesting date, that is to say, to enter upon, remove, execute works in, pass through and occupy any such land and to do all such other acts in relation to any such land as are requisite or convenient for the purposes of any such operations :

Provided that neither the Commission nor a person to whom a licence has been granted under this section shall be entitled by virtue of this section or of the licence—

- (a) to interfere with the carrying on of underground operations carried on for a purpose other than a coal-mining purpose;
- (b) to interfere with the surface of any land;
- (c) to withdraw support from any land;
- (d) to do any other act in respect of any land which, if this section had not been enacted, would be actionable by virtue of any servitude, restrictive covenant, or statutory prohibition or restriction adversely affecting that land; or
- (e) to do any other act which, if this section had not been enacted, would be actionable as a trespass or as a nuisance and which, if done, would be likely to cause actual damage other than of a purely nominal amount.

---

*Status: This is the original version (as it was originally enacted).*

---

## **16 Commission to have exclusive right to search and bore for coal**

On and after the vesting date it shall not be lawful for any person, other than the Commission or a person authorised by them so to do, or a person having the right so to do by virtue of a retained interest subject to which the coal in question is vested in the Commission, to search or bore for coal.

## **17 Coal not to be alienated from the Commission**

- (1) A power to acquire land compulsorily conferred by or under any enactment (including, unless the contrary intention appears therein, an enactment passed after the date of the passing of this Act) shall not be exercisable on or after the date of the passing of this Act in respect of any coal or mine of coal, other than coal that is necessary to be dug or carried away in the course of operations for the purposes of which the power is conferred or a mine that is necessary to be used in the course of such operations.
- (2) No right adverse to the title to any coal or mine of coal vested in the Commission by virtue of this Part of this Act shall be capable of being acquired under the Real Property Limitation Acts, 1833, 1837, and 1874, or any of them or under any enactment (including, unless the contrary intention appears therein, an enactment passed after the date of the passing of this Act) that amends, or repeals and re-enacts any of those Acts.
- (3) The Commission shall not alienate for any freehold interest any coal or mine of coal, other than coal that is necessary to be dug or carried away in the course of operations for purposes other than coal-mining or a mine that is necessary to be used in the course of such operations, or coal present among other minerals that is of so small value that the working thereof is unlikely to be undertaken except as an operation subsidiary to the working of those other minerals, or a mine used primarily for purposes other than coal-mining.
- (4) In this section 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.
- (5) Nothing in the foregoing provisions of this section shall affect the acquisition or granting of a servitude adversely affecting coal or a mine of coal, or the acquisition or granting under any enactment of any liberty, privilege, easement, right or advantage, adversely affecting coal or a mine of coal.

## **18 Coal not to be dealt with to the prejudice of the Commission after passing of this Act**

As from the date of the passing of this Act until the valuation date, all persons interested in coal or a mine of coal shall be treated as holding their respective interests in a fiduciary capacity for giving effect to the provisions of this Part of this Act, and as being subject accordingly to an obligation to refrain from any dealing therewith (not being a disposition or other dealing which might reasonably have been effected in the ordinary course of business if this Act had not been passed) calculated to give a factitious or artificial value to a holding or to prejudice the interests or powers to be acquired by the Commission under this Part of this Act.

## **19 Restriction on certain dispositions by lessees of coal**

- (1) On and after the valuation date no term of years in coal or a mine of coal shall be capable of being created either at law or in equity by way of underlease out of a term of years therein :

Provided that this subsection shall not apply to the creation as aforesaid of a term of years by way of mortgage or 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 or to a mine thereof.

- (2) In every lease granted by the Commission there shall be implied, and every coal-mining lease the immediate reversion whereon is vested in the Commission by virtue of this Part of this Act, either as to the whole or as to part of the premises comprised therein, shall have effect as from the vesting date as if it had contained, a covenant on the part of the lessee or of the lessees jointly and severally, as the case may be, not to assign or to part with the possession of any coal or mine of coal comprised therein without first obtaining the written consent of the Commission (which may be withheld without reason given and at the sole discretion of the Commission), and a condition of re-entry in the event of a breach of the said covenant:

Provided that, where such a lease as aforesaid comprises premises the immediate reversion wherein is vested in the Commission and other premises, the condition of re-entry shall extend only to the first-mentioned premises.

- (3) The covenant mentioned in the last preceding subsection shall have effect as a covenant to which section seventy-nine of the Law of Property Act, 1925, applies and which does not contain any such expression of contrary intention as is therein mentioned.

## **20 Provision as to arbitration**

On and after the valuation date, a clause shall be included in all leases of coal or mines granted by the Commission providing for arbitration in the case of any dispute between the Commission and the lessee in respect of any provision of the lease or any matter arising therefrom.

## **21 Power of the Court to appoint receiver and manager on the application of the Commission**

In any proceedings in which the Commission claim to recover possession of premises vested in them from a lessee thereof, or other relief in respect of a breach by the lessee of his obligations under the lease, the Court in which the proceedings are pending may, on the application of the Commission, make such order as it thinks fit for the purpose of enabling operations for coal-mining purposes to be carried on on the premises, or for the preservation thereof, during the continuance of the lease and during any period that may elapse between a determination thereof and the granting of a new lease, and the provision to be made by any such order may include the appointment of a receiver of the rents and profits of the premises, with liberty, subject to such terms and conditions as the Court may think fit to impose, to manage the undertaking, to use for the purposes of the order any fixed or movable plant or machinery of the lessee in or upon the premises, and to do all such other acts and things as may be or become requisite for those purposes.

---

*Status: This is the original version (as it was originally enacted).*

---

## 22 Amendments of working facilities enactments

- (1) Section one of the Mines (Working Facilities and Support) Act, 1923, and subsection (1) of section thirteen of the Mining Industry Act, 1926 (which relate to the granting by the Railway and Canal Commission of rights to search for or work minerals), shall, on the vesting date, cease to have effect as respects coal within the meaning of this Part of this Act:

Provided that—

- (a) this subsection shall not apply to the granting of a right required by reason of the subsistence of a retained copyhold interest; and
  - (b) this subsection shall not affect the power conferred on the Railway and Canal Commission by section eighteen of the Railway and Canal Traffic Act, 1888, to review and rescind or vary a working facilities order subsisting on the vesting date.
- (2) No order shall be made under section two of the Mines (Working Facilities and Support) Act, 1923 (which relates to the granting of rights in the case of a failure or refusal of lessors of mines to concur in an adjustment of boundaries) on the ground of any failure or refusal on the part of the Commission.
- (3) To the rights specified in paragraphs (a) to (e) of subsection (2) of section three of the Mines (Working Facilities and Support) Act, 1923 (which specifies certain ancillary rights that may be conferred where required in order that minerals may be properly and conveniently worked) there shall be added the following right, so far as it may be required in order that coal within the meaning of this Part of this Act may be properly and conveniently worked, that is to say—
- “(f) In a case in which the surface has been used for the erection of any works for a coalmining purpose within the meaning of Part I of the Coal Act, 1938, or of dwellings for persons employed in connection with the working of coal within the meaning of that Part of that Act, or with any such works as aforesaid or as are mentioned in paragraph (c) of this subsection, a right to use and occupy the works or dwellings for the purposes for which they were erected.”
- (4) Where such a right as is specified in the last preceding subsection is to be granted on the termination of a lease, and a right to erect or use the works or dwellings was comprised in that lease, the Railway and Canal Commission, in determining whether any compensation or consideration is to be paid or given in respect of the right to be granted by them and the amount thereof, if any, shall have regard to the fact that the right comprised in the lease was therein comprised and to the amount of any rent reserved by the lease in respect thereof.
- (5) In subsection (2) of section ten of the Mines (Working Facilities and Support) Act, 1923, there shall be inserted, after the words " The Board of Trade and any other Government Department " , the words " and the Coal Commission " .
- (6) Any right which under the Mines (Working Facilities and Support) Act, 1923, or under section thirteen of the Mining Industry Act, 1926, may be granted to a person having the right to work coal may be granted to the Commission where required by them for the purpose of searching and boring for coal.