

Coal Industry Act, 1949

12 & 13 GEO. 6. CH. 53.

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CHAPTER 53

An Act to alter the composition of the National Coal Board, extend the area within which their activities may be carried on, empower them to terminate certain long-term contracts and provide for the enforcement against them of certain workmen's compensation liabilities; to amend sections thirty-seven and sixty-four of the Coal Industry Nationalisation Act, 1946, and authorise the making of certain payments in connection with the settlement of disputes arising under regulations made under the said section thirty-seven and to repeal the provisions of that Act imposing restrictions on the disposal of government stock issued for compensation to companies; to extend the power of the Minister of Fuel and Power to make general regulations under section eighty-six of the Coal Mines Act, 1911, and otherwise to amend that section; and for purposes connected with the matters aforesaid.

[30th July 1949]

BE it enacted by the King'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:—

PART I

AMENDMENTS OF COAL INDUSTRY NATIONALISATION ACT, 1946

1.—(1) The number of members of the National Coal Board (in this Part of this Act referred to as "the Board") apart from the chairman of the Board shall, instead of being eight, be not less than eight nor more than eleven, and accordingly, in subsection (2) of section two of the Coal Industry Nationalisation

Alteration of
composition
of National
Coal Board.

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—cont.

Act, 1946 (in this Part of this Act referred to as “the principal Act”), for the words “eight other members” there shall be substituted the words “not less than eight nor more than eleven other members”.

(2) The persons from amongst whom the members of the Board are by subsection (3) of section two of the principal Act required to be appointed shall include persons appearing to the Minister to be qualified as having had experience of, and having shown capacity in, the coal-mining industry.

(3) The number of members of the Board, apart from the chairman thereof, required to render whole-time service to the Board shall not exceed eight.

(4) The Minister may appoint one of the members of the Board to act as deputy chairman thereof in addition to the member appointed by him under subsection (5) of section two of the principal Act so to act.

Extension of
area within
which the
Board's
activities may
be carried on.

2.—(1) Section one of the principal Act (under which the Board are established and their functions defined) shall not be limited by subsection (3) of section sixty-three of that Act (which provides that references in that Act to activities of any kind, whether or not described by that word, are to be construed as limited to activities of that kind carried on in Great Britain), and references to the activities of the Board in subsection (4) of section three of that Act (which requires the Board to afford to the Minister of Fuel and Power facilities for obtaining information with respect to the property and activities of the Board and to furnish him with returns, accounts and other information with respect thereto) shall be construed accordingly:

Provided that the Board shall not carry on any activities outside Great Britain except under an authority in that behalf conferred by order of the Minister.

(2) The power conferred by this section on the Minister shall be exercisable by statutory instrument which shall be laid before Parliament after being made.

Termination
of certain
long-term
contracts
transferred to
the Board.

3.—(1) Where a contract made before the primary vesting date to which a colliery concern or a class A or class B subsidiary of a colliery concern is a party contains provisions—

(a) which provide—

(i) for the sale or supply by the concern or subsidiary to a person (in this section referred to as “the purchaser”) of products of colliery production activities;

(ii) for the employment of a person (in this section referred to as “the agent”) as agent of the concern or subsidiary for the purpose of the sale or supply by the concern or subsidiary of such products; or

(iii) in connection with the transfer (whether or not by way of sale) to some person (in this section referred to as "the transferee") of a business or part of a business or the goodwill of a business, for restraining the concern or subsidiary (whether with or without limit of time) from selling or supplying such products either absolutely or in a specified area, or to specified persons or classes of persons (either generally or in a specified area) or for specified purposes or classes of purposes (either generally or in a specified area), or from carrying on business or a business of any class (either generally or in a specified area), or for securing that the concern or subsidiary shall be restrained as aforesaid;

(b) which, by virtue of section seven of, and the Second Schedule to, the principal Act have effect as if the Board had been a party to the contract instead of the concern or subsidiary; and

(c) whereof the operation cannot, apart from this section, be determined by the Board before the end of the year nineteen hundred and fifty-one;

this section shall apply to all the provisions of the contract which have effect as mentioned in paragraph (b) of this subsection:

Provided that this section shall not apply to provisions of a contract whereto the parties were, immediately before the primary vesting date, not connected (whether directly or indirectly) with each other to any material extent apart from the contract; and, in the case of a contract for the rendering of personal services, this section shall not apply to provisions thereof by reason only that they provide for the sale or supply of products of colliery production activities to the person by whom the services are to be rendered.

(2) If the Board are of opinion that they are, or are likely to be, hampered in the efficient performance of their functions by the operation of provisions of a contract, being provisions to which this section applies, they may, by notice in writing served on the purchaser, agent or transferee, as the case may be, determine the operation of the provisions on such date during the period of two years beginning with the first day of January, nineteen hundred and fifty, as may be specified in the notice, not being a date earlier than six months from the date of the service of the notice, and—

(a) if the contract does not comprise provisions other than those to which this section applies, it shall, as between the Board and the purchaser, agent or transferee, as the case may be, be deemed to be frustrated

PART I
—cont.

on that date, and the Board and the purchaser, agent or transferee, as the case may be, shall for that reason be deemed to be discharged from the further performance of their obligations by virtue of the provisions; and

- (b) if the contract comprises provisions other than provisions to which this section applies, so much of it as comprises provisions to which this section applies shall be treated as being a separate contract which shall, as between the Board and the purchaser, agent or transferee, as the case may be, be deemed to be frustrated on that date, and the Board and the purchaser, agent or transferee, as the case may be, shall, for that reason, be deemed to be discharged from the further performance of their obligations by virtue of the provisions to which this section applies:

Provided that the Board shall not determine the operation of provisions of a contract on the ground only that the financial terms thereof, or any of them, are, or may become, disadvantageous to them.

(3) The Board shall be liable, in consequence of an exercise, with respect to provisions of a contract, of their right under the last foregoing subsection, to pay to the purchaser, agent or transferee, as the case may be,—

- (a) in a case where the provisions contain all such terms as would be expected to be contained therein in the case of a contract entered into—

(i) in the open market in the ordinary course of business at the time when the contract which comprises the provisions was entered into ; and

(ii) between parties independent of each other who negotiated at arm's length ;

and do not contain any such terms as would not be expected to be so contained, compensation for the loss (if any) sustained by him in consequence of the exercise of that right; and

- (b) in any other case, compensation of an amount assessed by reference to the loss (if any) that would have been sustained by him in consequence of the exercise of that right if the provisions had been so adjusted as to satisfy the conditions specified in the foregoing paragraph.

(4) Any question whether provisions of a contract with respect to which the Board have served a notice under subsection (2) of this section are provisions to which this section applies or whether compensation is payable under this section to any person or as to the amount of compensation so payable

shall, in default of agreement between the Board and that person, be determined by arbitration under the principal Act, and subsection (2) of section sixty-one of that Act (which relates to arbitration thereunder) shall apply accordingly; and upon a reference under this section with respect to provisions of a contract, the arbitrator shall have exclusive jurisdiction to determine claims arising under the provisions between the Board and the purchaser, agent or transferee, with respect to the period before the frustration, and any claims arising under the Law Reform (Frustrated Contracts) Act, 1943, with respect to the provisions.

(5) Where the Board serve a notice under subsection (2) of this section with respect to provisions of a contract, and there is referred to arbitration under the principal Act the question whether the provisions are provisions to which this section applies, and the question is not determined before the date specified in the notice, the operation of the provisions of that subsection relating to the frustration of the contract or so much thereof as is required to be treated as being a separate contract shall be suspended pending the determination of that question, and if the arbitrator determines that the provisions of the contract are provisions to which this section applies, he shall substitute for the date specified in the notice such later date as he thinks fit (whether within the period of two years mentioned in that subsection or not) and the said provisions of that subsection shall thereupon have effect accordingly.

(6) Nothing in this section shall affect the operation of subsections (2) to (5) of section seven of the principal Act (which provide for the exclusion of the application of the Second Schedule to that Act to provisions of contracts).

(7) In relation to Scotland, subsection (4) of this section shall have effect as if, for the reference to the Law Reform (Frustrated Contracts) Act, 1943, there were substituted a reference to the common law of Scotland with regard to the frustration of contracts.

4.—(1) References in section thirty-seven of the principal Act Super-
(which provides for the making of regulations with respect to annuation,
pensions, gratuities and other like benefits) to employment in &c., rights.
or in connection with coal industry activities shall be construed
as not including and as never having included references to
employment in or in connection with coal industry activities by
a person other than a colliery concern, a class A subsidiary of a
colliery concern, the Coal Commission, a body administering a
selling scheme, a selling agent appointed under a group selling
scheme or the South Yorkshire Mines Drainage Committee,
and references in that section to employment in or in

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—cont.

connection with transferred allied activities shall be construed as not including and as never having included references to employment otherwise than by the owner of an interest falling within Part II, III or IV of the First Schedule to the principal Act that vests in the Board by virtue of the exercise of an option in or in connection with activities for which that interest was owned or for which things wherein that interest subsisted were used, and the reference in paragraph (a) of subsection (2) of that section to a person's ceasing to be employed in coal industry activities or transferred allied activities shall be construed accordingly.

(2) The power conferred by paragraph (c) of subsection (1) of the said section thirty-seven to provide for the continuance, amendment or revocation of existing schemes or other arrangements for the provision of pensions, gratuities or other like benefits and of trust deeds, rules or other instruments made for the purposes thereof, and for the transfer or extinguishment of liabilities under, and the transfer or winding up of funds held for the purposes of, any such schemes or arrangements shall be exercisable in relation to schemes or other arrangements for the provision of such benefits in favour of—

- (a) persons to whom subsection (2) of that section, as amended by this section, applies; and
- (b) persons, other than as aforesaid, taken into the employment of the Board before the commencement of this Act, being persons who had been in employment in, or in connection with, coal industry activities or transferred allied activities,

or in favour of other persons by reference to the employment of such persons as aforesaid, to trust deeds, rules or other instruments made for the purposes of any such schemes or arrangements and to liabilities thereunder and funds held for the purposes thereof, but shall not be exercisable in relation to any other schemes or arrangements or instruments, liabilities or funds.

(3) Subsection (2) of the said section thirty-seven (which provides that, in the case of persons who have been in employment in or in connection with coal industry activities or transferred allied activities before the primary or other relevant vesting date, the regulations to be made for the purposes of subsection (1) of that section shall be so framed as to secure, amongst other things, that where an expectation of accruer, whether as of right or under customary practice, of any particular benefits in favour of any such person, or in favour of another person by reference to his employment, ceases or is prejudiced by reason of his ceasing in consequence of the passing of that Act to be employed by his previous employer or to be employed in the activities

aforesaid, the same benefits, or substituted benefits not less advantageous, shall be provided for under the regulations) shall be deemed to have been enacted with the omission of the words “ or an expectation of accruer (whether as of right or under customary practice) of ”, but the said regulations shall be so framed as to secure that where, in the case of a person to whom the said subsection (2), as amended by subsection (1) of this section, applies, such an expectation as aforesaid ceases or is prejudiced by reason of his ceasing in consequence of the passing of the principal Act to be employed by his previous employer or to be employed in activities to which paragraph (a) of that subsection, as so amended, applies, there shall be provided in his favour or in favour of another person by reference to his employment, fair and reasonable compensation for the cesser of or prejudice to that expectation, being compensation ascertained by reference—

- (a) to the period of employment to service wherein that expectation was ascribable; and
- (b) (except where the benefits expected to accrue would not have been ascertained by reference to emoluments enjoyed by him), to the emoluments enjoyed by him during that period ;

and (in such cases and to such extent as may be specified in the regulations) taking into account, as regards the amount thereof, any loss of benefits which might have been expected to accrue by virtue of employment after the expiration of the period aforesaid:

Provided that this subsection, so far as it relates to the framing of regulations, shall have effect subject to such limitations as may be prescribed for meeting cases in which any such expectations as aforesaid may have been created, otherwise than in the ordinary course, in connection with any provision made by the principal Act or with any anticipation of the making of any such provision.

(4) Regulations made for the purposes of the said section thirty-seven shall provide for the reference to a referee or board of referees appointed by the Minister of Labour and National Service of any dispute arising—

(a) in a case where—

- (i) a right to any particular benefits in favour of a person to whom subsection (2) of that section, as amended by subsection (1) of this section, applies, or in favour of another person by reference to his employment, has ceased or been prejudiced by reason of his ceasing in consequence of the passing of the principal Act to be employed by his previous

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employer or to be employed in activities to which paragraph (a) of the said subsection (2), as so amended, applies; or

(ii) any such person retired from employment before the primary or other relevant vesting date, and he, or another person by reference to his employment, had been in receipt of benefits granted in respect of his employment,

whether benefits provided in pursuance of regulations so made are the same as, or not less advantageous than, those the right to which has so ceased or been prejudiced, or, as the case may be, those that had been received;

- (b) in a case where an expectation of accrual of any particular benefits in favour of a person to whom the said subsection (2), as amended as aforesaid, applies, or in favour of another person by reference to his employment, has ceased or been prejudiced as aforesaid, whether compensation provided in pursuance of regulations so made satisfies the requirements of the regulations;

and where, upon a reference under a provision of regulations having effect by virtue of this subsection, the referee or board of referees determines what benefits or compensation must be provided in order to satisfy the requirements of the regulations, it shall be the duty of the person charged by the regulations with the provision of the benefits or compensation to give effect to the determination.

(5) The Minister of Labour and National Service may, with the approval of the Treasury, pay out of moneys provided by Parliament—

- (a) to a referee or the members of a board of referees appointed by him under any regulations made under the said section thirty-seven which provide for the reference of disputes arising under the regulations to a referee or board of referees appointed by him, such fees and allowances as he may, with the consent of the Treasury, determine; and
- (b) to persons giving evidence before any such referee or board, such allowances as he may, with the consent of the Treasury, determine.

5.—(1) If it appears to His Majesty in Council that arrangements have been made—

- (a) between the Board and a person who at any time before the primary vesting date was the owner of an interest in property that vested in the Board under the principal Act, for the assumption by the Board of all or any

Power to provide for enforcement against the Board of certain workmen's compensation liabilities.

of the workmen's compensation liabilities of that person ; or

- (b) between the Board and a mutual indemnity association of which any such person as aforesaid is, or was at any time, a member, for the assumption by the Board of all or any of such of the liabilities of the association under a contract of insurance entered into between them and any person (whether such a person as aforesaid or not) whereby he is or was insured against workmen's compensation liabilities to any workmen as, by virtue of the happening of any of the events mentioned in subsection (1) of section seven of the Workmen's Compensation Act, 1925 (which relates to bankruptcy, the winding up of companies, etc.), are enforceable against the association by the workmen, their legal personal representatives or their dependants or others to whom or for whose benefit compensation is payable ;

he may by Order in Council provide for the enforcement of the liabilities to which the arrangements relate against the Board instead of against that person or, as the case may be, the association, as if the employment out of which the liabilities arise had been employment by the Board instead of by that or some other person or, as the case may be, the Board had subscribed the contract instead of the association and, in connection therewith, for conferring on the Board the rights and remedies which that person or, as the case may be, the association would have had in respect of the liabilities if they had remained enforceable against that person or, as the case may be, the association.

(2) Where the discharge of a workmen's compensation liability which, by virtue of an Order in Council under the foregoing subsection, is rendered enforceable against the Board is secured by virtue of a compensation trust, the Order may extinguish the liability of the trustees under the trust to make a payment in or towards the discharge of the first-mentioned liability.

(3) Where a person the discharge of any of whose workmen's compensation liabilities is secured by a compensation trust was at any time before the primary vesting date the owner of an interest in property that vested in the Board under the principal Act, the trustees under the trust shall have power, and be deemed always to have had power, to make to the Board, out of the trust fund created for the purposes of the trust, payments in consideration of the assumption by the Board, under arrangements made between the Board and that person, of any of those liabilities of that person the discharge of which is secured by the trust.

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—cont.

(4) An Order in Council under this section may contain such incidental and supplementary provisions as appear to His Majesty in Council to be requisite or expedient for the purposes of the Order, and—

- (a) without prejudice to the generality of the foregoing provision, where an Order in Council under this section makes provision for rendering enforceable against the Board any liabilities of the Durham Colliery Owners' Mutual Protection Association, it may make such provision with respect to the exercise of all or any of the powers conferred by any order under paragraph (16) of the Second Schedule to the Workmen's Compensation Act, 1906, on a committee representative of that Association and an association of workmen as appears to His Majesty in Council to be requisite or expedient having regard to the provisions of the Order in Council; and
- (b) without prejudice to the generality of the said provision or to the power conferred on His Majesty in Council by subsection (3) of section eighty-nine of the National Insurance (Industrial Injuries) Act, 1946, to provide for winding up compensation trusts, where an Order in Council under this section extinguishes liabilities of the trustees under such a trust it may, if it appears to His Majesty in Council to be requisite or expedient so to do, provide for the winding up of that trust;

and rules made under section four of the Workmen's Compensation (Coal Mines) Act, 1934, in relation to deposits made under that section by mutual indemnity associations may, notwithstanding the repeal of that Act by the said section eighty-nine, make provision for any matters consequential on the passing of this section.

(5) An Order in Council under this section may be varied or revoked by a subsequent Order in Council thereunder.

(6) In this section—

- (a) the expression "compensation trust" means a compensation trust for the purposes of the Workmen's Compensation (Coal Mines) Act, 1934, and the expression "mutual indemnity association" has the same meaning as in that Act; and
- (b) the expression "workmen's compensation liability" means a liability under the Workmen's Compensation Acts, 1925 to 1945, or the enactments repealed by the Workmen's Compensation Act, 1925, or the enactments repealed by the Workmen's Compensation Act, 1906, but does not include, in relation to any person,

any such liability as aforesaid against which he is insured under a contract of insurance subscribed by a person other than a mutual indemnity association ; and references in this section to liabilities shall be construed as including references as well to contingent as to accrued liabilities.

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—cont.

6. Section twenty-three of the principal Act (which imposes restrictions on the disposal of government stock issued to a company in or towards satisfaction of compensation in respect of a transfer to the Board of assets, property, rights and liabilities of the company), and, in section thirty-three of that Act, the words “ stock issued in exchange under subsection (4) of section twenty-three of this Act ” in subsection (1), and the words “ (other than inalienable stock) ” in subsection (6), are hereby repealed. Repeal of s. 23 of Act of 1946.

7. Subsection (2) of section sixty-four of the principal Act (which makes provision for the application of that Act to Scotland) shall have effect, and be deemed always to have had effect, as if there were inserted, after the words “ Court of Session ”, the words “ the expression ‘ charge or lien for securing money or money’s worth ’ includes a heritable security other than a standard charge constituted by section twelve of the Church of Scotland (Property and Endowments) Act, 1925, and does not include any stipend ”. Amendment of s. 64 of Act of 1946.

8. Expressions used in this Part of this Act to which meanings are assigned by the principal Act for the purposes thereof have those meanings for the purposes of this Part of this Act. Interpretation of Part I.

PART II

EXTENSION OF POWER TO MAKE GENERAL REGULATIONS UNDER THE COAL MINES ACT, 1911

9.—(1) The power of the Minister of Fuel and Power under subsection (1) of section eighty-six of the Coal Mines Act, 1911 (in this Part of this Act referred to as “ the principal Act ”) to make general regulations shall include power to make such general regulations with respect to all or any of the following matters, that is to say— Additional matters for which regulations may be made.

- (a) the appointment of, and the qualifications to be possessed by, persons concerned with the management of mines or otherwise acting in or in connection with the carrying on of mining operations and the duties to be discharged by such persons or any class thereof;

PART II
—cont.

- (b) the granting to such persons as aforesaid or any class thereof of certificates as to the possession by them of such qualifications as may be specified by or described in the regulations, and the cancellation, renewal and restoration of such certificates, and the examinations to be undergone and the qualifications to be possessed by applicants for such certificates ;
- (c) the conferment on the Board for Mining Examinations of powers and duties in connection with all or any of the matters mentioned in the last foregoing paragraph (whether in addition to, or in substitution for, any other of their powers and duties), and the alteration of the constitution and style of that Board;
- (d) the inspection of mines on behalf of the workmen employed therein; and
- (e) the making by persons concerned with the management of mines or otherwise acting in or in connection with the carrying on of mining operations of returns, the giving by them of notices, the keeping by them of books and the preparation by them of plans and sections,

as it appears to the Minister to be requisite or expedient to make having regard to the needs of the mining industry, changes in the methods of mining, the progress of education and training and the results of research, and regulations made by virtue of this subsection may contain such incidental and supplementary provisions (including provisions for charging fees in respect of the grant of certificates and the undergoing of examinations) as appear to the Minister to be requisite or expedient for the purposes of the regulations, and may, in particular, vary, amend or replace any of the provisions contained in Part I of the principal Act.

(2) Section twenty-two of the Mining Industry Act, 1926 (which empowers the Minister of Fuel and Power by order to vary the provisions of sections nine and ten of the principal Act relating to the examination and qualifications of applicants for certificates of competency under that Act, and the grant of such certificates) is hereby repealed, but this repeal shall not affect any order under the said section twenty-two which is in force at the commencement of this Act, and the provisions of any such order shall have effect as if they were contained in regulations made under this section.

Power to prohibit employment in mines of persons refusing medical examination or medically unfit.

10. General regulations made under subsection (1) of section eighty-six of the principal Act shall provide for prohibiting the employment in or about a mine, either absolutely or in a particular capacity or in particular work, of—

- (a) any person who fails without reasonable cause to submit himself for medical examination in accordance with provisions in that behalf of regulations so made;

- (b) any person as to whom it is determined in accordance with regulations so made that, by reason of his physical or mental condition, he is unfit for such employment or for such employment in that capacity or in that work, as the case may be.

PART II
—cont.

11.—(1) Subsection (1) of section eighty-six of the principal Act shall have effect, and be deemed always to have had effect, with the substitution, for the words “and any such regulations may vary or amend any of the provisions contained in Part II of, or the Third Schedule to, this Act”, of the words “and any such regulations may vary, amend or replace any of the provisions contained in Part II of, or the Third Schedule to, this Act”. Minor amendments of s. 86 of Act of 1911.

(2) Subsection (2) of the said section eighty-six (which provides that general regulations may apply either to all mines or to any specified class or description of mines, and may provide for the exemption of any specified class or description of mines either absolutely or subject to conditions) shall have effect, and be deemed always to have had effect, with the substitution, for the words “and may provide for the exemption of any specified class or description of mines either absolutely or subject to conditions”, of the words “and may provide for the exemption, either absolutely or subject to conditions, of a particular mine or a specified class or description of mines or of part of a particular mine, parts of all mines or parts of mines of a specified class or description”.

12. In this Part of this Act the expression “mine” means a mine to which the principal Act applies, that is to say, a mine (as defined by that Act) of coal, stratified ironstone, shale or fire-clay, and the expression “mining” shall be construed accordingly. Meanings of “mine” and “mining”.

PART III

SHORT TITLE, &c.

13.—(1) This Act may be cited as the Coal Industry Act, 1949. Short title, citation and extent.

(2) The Coal Industry Nationalisation Act, 1946, and Part I of this Act may be cited together as the Coal Industry Acts, 1946 and 1949, and the Coal Mines Acts, 1887 to 1943, and Part II of this Act may be cited together as the Coal Mines Acts, 1887 to 1949.

(3) This Act shall not extend to Northern Ireland.

Table of statutes referred to in this Act

Short Title	Session and Chapter
Workmen's Compensation Act, 1906	6 Edw. 7. c. 58.
Coal Mines Act, 1911	1 & 2 Geo. 5. c. 50.
Church of Scotland (Property and Endowments) Act, 1925	15 & 16 Geo. 5. c. 33.
Workmen's Compensation Act, 1925	15 & 16 Geo. 5. c. 84.
Mining Industry Act, 1926	16 & 17 Geo. 5. c. 28.
Workmen's Compensation (Coal Mines) Act, 1934	24 & 25 Geo. 5. c. 23.
Law Reform (Frustrated Contracts) Act, 1943 ...	6 & 7 Geo. 6. c. 40.
Coal Industry Nationalisation Act, 1946 ...	9 & 10 Geo. 6. c. 59.
National Insurance (Industrial Injuries) Act, 1946	9 & 10 Geo. 6. c. 62.

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