



# Coal Act 1938

## 1938 CHAPTER 52

### PART I

#### UNIFICATION OF COAL MINING ROYALTIES

##### *Transitional provisions*

#### **8 Rights and obligations arising from contract for sale to have effect in respect of interim period**

The rules of law and equity that regulate rights and obligations in relation to land that is the subject of a contract for sale in respect of the period between the date of the contract and the date fixed for completion thereof shall have effect in relation to the premises that are to vest in the Commission by virtue of this Part of this Act in respect of the interim period, subject to and in accordance with the following provisions, that is to say :—

- (a) the said rules shall have effect subject to such modifications as are requisite by virtue of the fact that the said premises are to vest by virtue of this Part of this Act in lieu of being conveyed;
- (b) full regard shall be had to the nature of the said premises in all respects and, in particular, in determining whether any act or omission involves a breach of the obligation imposed on a vendor by the said rules to take due care of land that is the subject of a contract for sale, no person shall be treated as under obligation to exercise any greater measure of care in relation to any of the said premises than is exercised under the ordinary practice of the management of mineral estates by prudent owners in relation to property that is to continue in their ownership; and
- (c) the contract for sale to be assumed for the purposes of the said rules shall be a contract providing expressly that the vendor should be entitled to the possession and enjoyment of the property until the date fixed for completion and to the benefit of the rents and profits thereof accruing up to that date, and that rents and profits accruing, or coal worked, before that date from a mine

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of coal that is opened after the date of the contract should be treated in like manner as if the mine had been open at the date thereof.

## **9 Notice to the Commission, and effect, of dispositions made during interim period**

- (1) Where it is proposed to grant during the interim period (otherwise than in accordance with the provisions of section twelve of this Act) a coal-mining lease of or comprising any premises that are to vest in the Commission by virtue of this Part of this Act, or to vary or renew such a lease, a draft of the proposed lease or other instrument must be delivered to the Commission at least two months before the date on which it is to be executed.
- (2) Where it is proposed to make during the interim period any other disposition of or affecting any of the said premises, notice in writing of the proposal may be delivered to the Commission.
- (3) A lease, variation, renewal or other disposition granted or effected pursuant to a proposal notified, to the Commission under either of the preceding subsections shall be deemed to have been granted or effected in conformity in all respects with the rules mentioned in the last preceding section unless, in proceedings commenced by the Commission within two months from the date on which they have been notified of the proposal, the Court makes a declaration that the proposal is not in conformity therewith.
- (4) If—
  - (a) any such lease, variation or renewal as is mentioned in subsection (1) of this section is granted or effected during the interim period otherwise than pursuant to a proposal notified to the Commission as required by that subsection ; or
  - (b) any such lease, variation or renewal as aforesaid, or any other disposition of or affecting any premises that are to vest in the Commission by virtue of this Part of this Act, is granted or effected during the interim period in such manner as to contravene any of the said rules;

then, unless it is so granted or effected with the consent of the Commission or is saved by the provisions of the last preceding subsection, it shall, so far as regards the title for which the premises in question vest in the Commission, be void, and any right accruing to the Commission to sue for damages in respect of any act or omission that contravenes any of the said rules may be enforced as well after as before the vesting date, notwithstanding that the Commission became aware thereof before that date.

## **10 Acquisition by the Commission of right to arrears of rent**

It shall be within the competence of the Commission to take from the person entitled thereto an assignment of any debt due from a lessee in respect of rent payable before the vesting date for premises that are to vest or have vested in the Commission, and, in the case of such rent becoming payable at any time within the twelve months next before the vesting date, the Commission shall, on being required so to do by notice in writing served on them by the person entitled thereto at any time before the expiration of twelve months from the vesting date, take an assignment of any debt due from the lessee in respect thereof at a price to be determined by agreement between that person and the Commission or, in default of agreement, by arbitration.

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## **11 Apportionment of rent and determination of questions on severance of subsisting leases**

(1) In the case of every coal-mining lease subsisting on the vesting date in the case of which either—

- (a) a severance of the reversion immediately expectant on the lease is effected, by the vesting in the Commission by virtue of this Part of this Act of that reversion as regards a part only of the premises which are comprised in the lease; or
- (b) a severance of the interests arising under the lease is effected, by the vesting in the Commission by virtue of this Part of this Act of those interests as regards a part only of the premises which are comprised in the lease and the immediate reversion in which is vested in the Commission;

and the lease does not reserve separate rents for the several parts of the premises, the rent reserved by the lease shall be apportioned, and the parts of that rent to be apportioned to the several parts of the premises shall, in default of agreement between the Commission and any other person entitled in reversion immediately expectant on the lease and the lessee, be determined by an arbitrator selected by agreement between the parties or, in default of agreement, by the Lord Chancellor in the case of England or the Lord President of the Court of Session in the case of Scotland.

(2) Where an apportionment of the rent reserved by a lease has been made for the purposes of a valuation of a part of the premises under the Third Schedule to this Act, an arbitrator shall have regard to that apportionment for the purposes of a determination under the preceding subsection.

(3) In the case of every coal-mining lease subsisting on the vesting date in the case of which such a severance as aforesaid is effected as aforesaid, the Commission shall pay the costs reasonably incurred by any person in connection with a reference to arbitration under subsection (1) of this section, or with any application to the Court that may be requisite for the purpose of determining any question as to the rights or liabilities of any person under the lease that arises in consequence of the severance :

Provided that the arbitrator or the Court, as the case may be, may direct that the Commission shall not be liable to pay any such costs as aforesaid incurred by a person who appears to the Court to have made a reference or application or prosecuted proceedings thereon unreasonably, or to have been guilty of any such unreasonable failure to agree with the Commission or with any other party, or of any such negligence or default, as to disentitle him to payment of those costs; and, if it appears to the Court that the necessity for the determination of the question raised on an application arose in part only in consequence of such a severance as aforesaid, the Court may direct that the Commission shall be liable to pay a proportionate part only of such costs as aforesaid.

(4) A Regional Valuation Board shall cause proper records to be kept of apportionments of rent made by them for the purposes of valuations made by them and of any alteration of any such apportionment made by a referee on a review of a valuation made by them, and any entry in any book or other document kept for the purposes of this subsection, or a copy thereof upon which is endorsed a certificate purporting to be signed by a person authorised in that behalf by the Board stating that the copy is a true copy, shall in all legal proceedings be evidence of the entry and of the apportionment referred to.

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## **12 Powers of the Commission for consolidation of leases before the vesting date**

- (1) Where rights to work a number of parcels of coal are subsisting under a number of coal-mining leases in the same working lessee and it appears to the Commission that it is expedient that arrangements should be made during the interim period for the working of that coal as a whole under a single lease, the Commission may make, in agreement with the working lessee, a scheme for the purposes of this section (in this section and in the Fourth Schedule to this Act referred to as a " lease consolidation scheme ").
- (2) A single lease to be granted pursuant to a lease consolidation scheme that relates to any colliery area must comprise all the coal and mines of coal in that colliery area.
- (3) The provisions of the Fourth Schedule to this Act shall have effect as to the procedure for making, and as to the operation of, a lease consolidation scheme.
- (4) In connection with each lease consolidation scheme, provision shall be made in the manner specified in the Fourth Schedule to this Act for ascertaining an amount (in this section and in that Schedule referred to as the " standard amount of rent ") representing the amount of rent which, after deduction of income tax, mineral rights duty and royalties welfare levy, might reasonably have been expected to become receivable, if the scheme had not been made, in right of each reversion (whether immediate or superior) on a subsisting working lease in premises that are to be comprised in the single lease, for each half year (or other period in respect of which rent is to be receivable under the single lease) between the coming into operation of the scheme and the vesting date.
- (5) If the amount of the rent receivable, after such deduction as aforesaid, under the single lease, in respect of the premises comprised therein, being premises that were comprised in any of the subsisting working leases, for any period for which standard amounts of rent are fixed in connection with the scheme, is less than the aggregate of those standard amounts, the Commission shall pay to the person entitled to recover that rent such a sum as after deduction of income tax will yield an amount equal to the deficiency, and any sum so paid for any period shall be deemed to be income for that period of the respective persons entitled beneficially to that rent.
- (6) If the amount of the rent receivable as aforesaid is greater than the aggregate aforesaid, the person entitled to recover that rent shall pay to the Commission an amount equal to the excess.
- (7) In this section and in the Fourth Schedule to this Act—
  - (a) the expression " colliery area " means an area comprising all parcels of coal which are capable of being conveniently and economically worked to the shafts of a single colliery, and in respect of which the same person is working lessee;
  - (b) the expression " working lessee" means, in relation to any parcels of coal, a person carrying on the business of coal-mining who has rights to work those parcels by virtue of a number of coal-mining leases held by him in possession (that is to say not subject to any under-lease) or so held by another for his benefit; and
  - (c) the expression " subsisting working lease " means a coal-mining lease which comprises any coal in a colliery area to which a lease consolidation scheme relates and which is held as aforesaid by or for the benefit of the working lessee.

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### **13 Right of freeholder of coal, who carries on coalmining business, to lease thereof**

- (1) A person carrying on the business of coalmining immediately before the vesting date, who is then beneficially entitled (whether or not subject to a mortgage) to the entire fee simple in coal or a mine of coal that is not subject at that date to any coal-mining lease, shall have the right, if he has made an application in writing in that behalf to the Commission before the vesting date, to a grant from the Commission of a coalmining lease comprising any coal or mine of coal specified in his application to which he is so entitled and any property and rights that vest in the Commission therewith :

Provided that—

- (a) the right under this section to a grant of a lease of any coal or mine shall be conditional upon the applicant's satisfying the requirements of the Third Schedule to this Act as to the registration of particulars thereof under the Registration Act and the making of a claim for compensation for the fee simple therein, and to his complying with the provisions of that Schedule that impose upon him any duty in connection with the valuation of the fee simple therein; and
- (b) a person shall not be entitled under this section to a lease the grant of which would interfere with the exercise of a right granted by a working facilities order, or with the use or exercise under a coal-mining lease of any property or right comprised therein.
- (2) A lease granted under this section shall be granted for such a term, commencing on the vesting date, as the person entitled to the lease may require, not being longer as regards the coal comprised therein than may be reasonably requisite for enabling that coal to be worked out, and subject to conditions with respect to rent and otherwise which shall not in any case be more onerous to the lessee than the conditions customary in the district or, where there are no customary conditions or the customary conditions are not applicable, than the conditions to which a person not entitled to the benefit of this section might reasonably have been expected to agree; and the conditions of the lease shall, where the person entitled thereto acquired the fee simple in the coal before the tenth day of November nineteen hundred and thirty-seven, be so framed as to secure that his financial position in respect of his business of working the coal shall neither be adversely affected nor improved by the fact that, in lieu of his remaining entitled to the fee simple in the coal, compensation of the amount ascertained under section seven of this Act becomes payable in respect thereof, and he becomes liable to a periodical payment of rent of an amount fixed by reference to the time requisite for enabling the coal to be worked out, and ceases to be liable as proprietor thereof for the payment of mineral rights duty and royalties welfare levy.
- (3) The provisions of the Fifth Schedule to this Act shall have effect with respect to the granting of leases under this section, and the substitution or variation of securities in the case of premises that were subject to a mortgage.
- (4) No stamp duty shall be chargeable upon a lease granted, and expressed to be granted under this section, or upon a substituted security, or an instrument making provision for the variation of a subsisting security, made and expressed to be made pursuant to the provisions of the Fifth Schedule to this Act.

### **14 Provisions as to documents and information for purposes of Part I**

- (1) The lessee under every coal-mining lease subsisting at the date of the passing of this Act, or granted between that date and the valuation date, shall within one month from

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the date of the passing of this Act or of the grant of the lease, as the case may be, deliver to the Commission notice in writing of the subsistence of the lease stating the date thereof and the parties thereto and indicating generally the situation of the premises comprised therein, and, if required by the Commission so to do, shall deliver to the Commission within one month after being so required a copy of the lease or, if the lease is by parole, a statement in writing setting out all the terms of the lease.

A person required by this subsection to deliver a copy of a lease or a statement shall be entitled to be paid by the Commission all costs reasonably incurred by him in the preparation and delivery thereof.

- (2) On the vesting date the property in, and the right to possession of, the following documents relating solely to the management of coal or a mine of coal shall vest in the Commission, that is to say, all plans, sections, records of survey and other similar documents, that belonged immediately before the vesting date to a person interested in coal or a mine of coal, other than—
  - (a) documents that belonged to a person having a retained interest and that relate to the premises in which that interest subsists;
  - (b) documents that belonged to a person who has duly made application under section thirteen of this Act for a grant from the Commission of a lease of any premises and that relate to those premises; and
  - (c) documents which, whilst relating solely to the management of coal or a mine of coal, relate to matters of management that touch or concern other land in which the person to whom the documents belonged is interested at the vesting date.
- (3) Where after the vesting date a person retains possession of any document relating to the title to, or to the management of, coal or a mine of coal, he shall be deemed to have given to the Commission an acknowledgment in writing of the right of the Commission to production of that document and to delivery of copies thereof, and section sixty-four of the Law of Property Act, 1925, shall have effect accordingly, and on the basis that the acknowledgment did not contain any such expression of contrary intention as is mentioned in that section.
- (4) Any person authorised in writing by the Commission, by the Central Valuation Board or by a Regional Valuation Board, a referee appointed under the Third Schedule to this Act and any person authorised in writing by such a referee, shall be entitled, on production in the case of a person authorised as aforesaid of his authority if so required, with or without workmen or other assistants at all reasonable times to enter upon, inspect and examine any premises where operations for coal-mining purposes or purposes connected therewith are carried on and to take plans and measurements of workings therein and to inspect all or any plans, sections, or particulars of such premises or workings, and to use free of charge all machinery and other facilities therein requisite or convenient for the exercise of any of the powers aforesaid, and it shall be the duty of all persons competent in that behalf to refrain from any act which might obstruct, and to give all assistance requisite for, the exercise of the powers conferred by this subsection.
- (5) Any person who makes default in compliance with the provisions of subsection (1) of this section, or who, on being duly required by virtue of the provisions of subsection (3) or (4) of this section to produce any document or to do or refrain from doing any other act, makes default without reasonable cause or excuse in complying with the requirement, shall be guilty of an offence under this section and shall be liable on

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summary conviction to a fine not exceeding fifty pounds, and to a further fine, not exceeding ten pounds, for every day on which he is in default.