



# Coal Act 1938

1938 CHAPTER 52 1 and 2 Geo 6

## PART I

### UNIFICATION OF COAL MINING ROYALTIES.

1 .....<sup>F1</sup>

**Textual Amendments**

**F1** S. 1 repealed by Statute Law (Repeals) Act 1973 (c. 39), Sch. 1 Pt. X

2 .....<sup>F2</sup>

**Textual Amendments**

**F2** S. 2 repealed by Coal Industry Nationalisation Act 1946 (c. 59), Sch. 4

*Unification of ownership of coal in the hands of the Commission.*

**3 Commission to acquire fee simple in coal.**

(1) .....<sup>F3</sup>

(2) . . .<sup>F4</sup> the first day of January nineteen hundred and thirty-nine (in this Act referred to as the “valuation date”) and the first day of July nineteen hundred and forty-two (in this Act referred to as the “vesting date”) . . .<sup>F4</sup>

(3) .....<sup>F3</sup>

(4) In this Part of this Act the expression “coal”—

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- (a) means bituminous coal, cannel coal and anthracite; but
- (b) shall, in a case in which minerals or substances other than bituminous coal, cannel coal or anthracite are comprised in a lease subsisting at the valuation date which confers a right to work and carry away both that coal or anthracite and those other minerals or substances, include those other minerals or substances, so however that the Commission may, by direction given in the prescribed manner before the expiration of six months from the valuation date, exclude any such other minerals or substances from the operation of this paragraph, and, in the case of any such other minerals or substances which in the opinion of the Commission are or would normally be worked by surface workings and not in association with that coal or anthracite, the Commission shall, if any person interested therein makes application to the Commission in that behalf before the expiration of six months from the valuation date, by direction exclude them from the operation of this paragraph; and
- (c) except in the case of references to the making merchantable or disposing of coal, means coal that is unworked, that is to say, not so severed as to have become a chattel.

**Textual Amendments**

**F3** Ss. 3(1)(3), 4, 6(1)(3)(4), 7–10, 12, 13 repealed by [Statute Law \(Repeals\) Act 1973 \(c. 39\)](#), **Sch. 1 Pt. X**

**F4** Words repealed by [Statute Law \(Repeals\) Act 1973 \(c. 39\)](#), **Sch. 1 Pt. X**

4 ..... F5

**Textual Amendments**

**F5** Ss. 3(1)(3), 4, 6(1)(3)(4), 7–10, 12, 13 repealed by [Statute Law \(Repeals\) Act 1973 \(c. 39\)](#), **Sch. 1 Pt. X**

**5 Retention of certain leasehold and other interests.**

- (1) Except as provided by subsection (2) of this section, interests in coal or a mine of coal that arise under a coal-mining lease shall be retained interests.
- (2) The following interests, that is to say—
  - (a) interests arising under a coal-mining lease in coal or a mine of coal which is sub-demised by a coal-mining lease derived out of that lease, or which is, by virtue of any other form of disposition taking effect directly or indirectly out of that lease, held in like manner as if it had been so sub-demised; and
  - (b) interests arising under a coal-mining lease where neither the lessee nor any person claiming under him is a person carrying on the business of coal-mining and having a substantial beneficial interest in the exercise of the rights conferred by the lease;
 shall not be retained interests unless the Commission so direct.
- (3) Any direction to be given for the purposes of the last preceding subsection shall be given by means of a notice in writing served on the lessee under the lease under

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which the interests in question arise, and must be given not later than the expiration of six months from the valuation date, or, if later, from the time when the Commission have received notice of the subsistence of that lease and also, in a case to which paragraph (a) of that subsection applies, of the sub-demise or other disposition.

Where a direction might be given both as respects interests arising under a lease and as respects interests arising under a lease derived out of that lease, a direction shall not be given as respects the former unless a direction has been given, or is to be given, as respects the latter also.

- (4) A right to work granted by a working facilities order shall, in so far as it creates an interest in any coal or mine of coal, be a retained interest.
- (5) Where coal or a mine of coal comprised in a coal-mining lease is subject to a right to work that coal or to use that mine for a coal-mining purpose, as the case may be, granted by a working facilities order to a person other than the person in whom the corresponding right arising under the lease is vested, this section shall have effect in relation to interests in that coal or mine arising under the lease in like manner as if that coal or mine had been sub-demised by a coal-mining lease derived out of that lease.
- (6) Interests in coal or a mine of coal in or under land formerly copyhold which were preserved to the tenant on the enfranchisement thereof shall be retained interests, except in a case in which the tenant has, by custom or otherwise (except by virtue of a coal-mining lease), the right to work coal in or under the land without the licence of the lord.
- (7) In this Part of this Act—
  - (a) references to an interest arising under a lease shall be construed as references to the interest of the lessee thereunder as such lessee and any interest held by a person claiming under him as so claiming, but shall not include any option to acquire, or any right of pre-emption over, an interest in coal or a mine of coal, that may be conferred by the lease;
  - (b) references to retained interests shall be construed, in relation to any coal or mine of coal, as references to interests therein that are retained interests by virtue of this section or of section thirty-four of this Act, and, in relation to any property or rights annexed to that coal or mine, as references to the corresponding interests therein;
  - (c) references to a retained copyhold interest shall be construed as references to an interest that is a retained interest by virtue of subsection (6) of this section.

**Modifications etc. (not altering text)**

C1 S. 5(2)(b) excluded by Coal Act 1943 (c. 38), s. 1

C2 S. 5(6) excluded by Coal Industry Act 1975 (c. 56), s. 3(1)

*Compensation of existing owners*

**6 Compensation payable in respect of acquisition as a whole.**

- (1) ..... F6
- (2) The compensation shall be ascertained separately in accordance with the next succeeding section in respect of—

*Status: Point in time view as at 01/02/1991.*

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- (a) all the said matters in respect of which compensation is to be payable, with the exception of—
  - (i) minerals or substances other than bituminous coal, cannel coal or anthracite, and property and rights annexed to any such minerals or substances and not to any such coal or anthracite or to a mine thereof, and
  - (ii) surface servitudes,
 which matters are in this Act referred to as “principal coal hereditaments”;
- (b) the matters within the exception aforesaid, in this Act referred to as “subsidiary coal hereditaments.”

(3) ..... F6

**Textual Amendments**  
 F6 Ss. 3(1)(3), 4, 6(1)(3)(4), 7–10, 12, 13 repealed by Statute Law (Repeals) Act 1973 (c. 39), Sch. 1 Pt. X

7.—10. .... F7

**Textual Amendments**  
 F7 Ss. 3(1)(3), 4, 6(1)(3)(4), 7–10, 12, 13 repealed by Statute Law (Repeals) Act 1973 (c. 39), Sch. 1 Pt. X

**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

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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 [<sup>F8</sup>who appears to the arbitrator or 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 to be evidence of the entry and of the apportionment referred to.

**Textual Amendments**

**F8** Words substituted by [Coal Act 1943 \(c. 38\), s. 3](#)

**Modifications etc. (not altering text)**

**C3** [S. 11](#) amended by [Coal Industry Nationalisation Act 1946 \(c. 59\), s. 38\(3\)](#)

**12, 13.** ..... <sup>F9</sup>

**Textual Amendments**

**F9** [Ss. 3\(1\)\(3\), 4, 6\(1\)\(3\)\(4\), 7–10, 12, 13](#) repealed by [Statute Law \(Repeals\) Act 1973 \(c. 39\), Sch. 1 Pt. X](#)

**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 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

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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 <sup>M1</sup>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 summary conviction to a fine not exceeding [<sup>F10</sup>level 3 on the standard scale], and to a further fine not exceeding ten pounds, for every day in which he is in default.

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**Textual Amendments**

**F10** Words substituted by virtue of (E.W.) [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), **ss. 38, 46** and (S.) [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), **ss. 289F, 289G**

**Modifications etc. (not altering text)**

**C4** [S. 14\(1\)](#) amended by [Coal Industry Nationalisation Act 1946 \(c. 59\)](#), **s. 38(3)**

**Marginal Citations**

**M1** [1925 c. 20.](#)

*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, <sup>[F11]</sup>the National Coal Board] 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 coal-mining 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 <sup>[F11]</sup>the National Coal Board] 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.

**Textual Amendments**

**F11** Words substituted (1.1.1947) by virtue of [Coal Industry Nationalisation Act 1946 \(c. 59\)](#), **s. 8(1)**

**Modifications etc. (not altering text)**

**C5** [S. 15](#) extended by [Coal Industry Nationalisation Act 1946 \(c. 59\)](#), **s. 8(1)** and (with modification) [Control of Pollution Act 1974 \(c. 40\)](#), **s. 25(1)(3)**

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**Textual Amendments**  
**F12** S. 16 repealed by [Coal Industry Nationalisation Act 1946 \(c. 59\)](#), **Sch. 4**

**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 <sup>M2</sup>Real Property Limitation Acts 1833, <sup>M3M4</sup>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) ..... <sup>F13</sup>
- (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.

**Textual Amendments**  
**F13** Ss. 17(3), 18, 20, 21 repealed by [Statute Law \(Repeals\) Act 1973 \(c. 39\)](#), **Sch. 1 Pt. X**

**Modifications etc. (not altering text)**  
**C6** S. 17 excluded by [Gas Act 1965 \(c. 36\)](#), **s. 13(8)**

**Marginal Citations**  
**M2** 1833 c. 27.  
**M3** 1837 c. 28.  
**M4** 1874 c. 57.

**18** ..... <sup>F14</sup>

**Textual Amendments**  
**F14** Ss. 17(3), 18, 20, 21 repealed by [Statute Law \(Repeals\) Act 1973 \(c. 39\)](#), **Sch. 1 Pt. X**



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**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 <sup>M5</sup>Law of Property Act 1925, applies and which does not contain any such expression of contrary intention as is therein mentioned.

**Marginal Citations**

M5 1925 c. 20.

20, 21. .... F15

**Textual Amendments**

F15 Ss. 17(3), 18, 20, 21 repealed by Statute Law (Repeals) Act 1973 (c. 39), Sch. 1 Pt. X

22 ..... F16

**Textual Amendments**

F16 S. 22 repealed by Mines (Working Facilities and Support) Act 1966 (c. 4), s. 15(2)(3), Sch. 1

23— ..... F17

30.

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**Textual Amendments**  
F17 Ss. 23–31, 35–40, 42(2), 43(3), 45(9)–(11) repealed by Statute Law (Repeals) Act 1973 (c. 39), Sch. 1 Pt. X

*Miscellaneous*

31 ..... F18

**Textual Amendments**  
F18 Ss. 23–31, 35–40, 42(2), 43(3), 45(9)–(11) repealed by Statute Law (Repeals) Act 1973 (c. 39), Sch. 1 Pt. X

**32 Competence of the Commission to acquire certain interests and rights.**

- (1) It shall be within the competence of the Commission to acquire—
  - (a) a retained copyhold interest in coal or a mine of coal;
  - (b) the fee simple or a term of years or other interest in any minerals or substances other than coal that are capable of being economically gotten in association with the working of coal that is being, or is proposed to be, worked; and
  - (c) the benefit or any right to be exercised in respect of any land for a coal-mining purpose.
- (2) The provisions of section fifteen of this Act shall have effect in relation to minerals acquired by the Commission under this section as if the references therein to operations for coal-mining purposes included references to operations for the like purposes as regards those minerals.

**33 Restriction on working of coal vested in statutory undertakers.**

- (1) Subject to the provisions of this section, coal the fee simple in which is at the date of the passing of this Act vested in statutory undertakers (that is to say, a local authority, company or other body or person authorised by or under an Act of Parliament, or an order having the force of an Act of Parliament, to construct, work, or carry on a railway, canal, inland navigation, dock, harbour, tramway, gas, electricity, water, sewage disposal, or other public undertaking), having been acquired, under powers in that behalf conferred by any such Act or order as aforesaid, for the purposes of their undertaking, shall vest in the Commission subject, in addition to the matters mentioned in subsection (4) of section four of this Act, to the restriction that the coal shall not be worked without the previous consent in writing of the persons in whom the undertaking is for the time being vested.
- (2) The foregoing subsection shall not apply to any such coal as aforesaid in a case in which the undertakers are not at the date of the passing of this Act interested in any land supported thereby, and, where any such coal as aforesaid vests in the Commission subject to the restriction aforesaid, the restriction shall have effect so long only as the persons in whom the undertaking is for the time being vested are interested in land supported thereby.

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- (3) Subsection (1) of this section shall not apply to any such coal as aforesaid which is subject at the date of the passing of this Act to a coal-mining lease.
- (4) A restriction imposed by this section shall not have effect in relation to working carried on in exercise of a right subject to which the coal in question vests in the Commission by virtue of this Part of this Act.
- (5) A consent in relation to a restriction imposed by this section shall not be unreasonably withheld, but this provision does not preclude the right of undertakers whose consent is sought—
- (a) to give consent subject, as far as may be reasonably requisite, to a condition that working shall not be such as to let down any land in which the undertakers are interested, or shall be limited to working in particular places or in a particular manner, or to other conditions or limitations as regards the working consented to or the payment of proper compensation for, or the making good of, damage arising therefrom; or
- (b) to require, as a condition of consent, payment of a reasonable sum in respect of any legal or other expenses incurred in connection with the consent.
- Any question arising under this subsection shall be referred to and determined by the [<sup>F19</sup>High Court][<sup>F20</sup>Court of Session], who shall have power to dispense with consent either without conditions or limitations or subject to any such conditions or limitations as aforesaid. In determining any such question the [<sup>F19</sup>High Court][<sup>F20</sup>Court of Session] shall have regard primarily to the safety and efficient working of the undertaking in question.
- (6) A restriction imposed by this section shall be enforceable by the persons in whom the undertaking is for the time being vested in the like manner, and against the like persons, as if it had been imposed by a covenant entered into by the Commission on the vesting date.
- (7) A holding subsisting in coal that is to vest in the Commission subject to a restriction imposed by this section shall (notwithstanding the provisions of section seven of this Act which require the value of a holding to be ascertained by reference to the amount which it might have been expected to realise if this Act had not been passed) be valued as if provision had been made before the valuation date for that restriction to take effect on the vesting date.

#### Textual Amendments

- F19** Words substituted (E.W.) by virtue of [Railway and Canal Commission \(Abolition\) Act 1949 \(c. 11\)](#), s. **1(1)**
- F20** Words substituted (S.) by virtue of [Railway and Canal Commission \(Abolition\) Act 1949 \(c. 11\)](#), s. **1(1)**

#### Modifications etc. (not altering text)

- C7** S. 33 amended by [Electricity Act 1989 \(c. 29, SIF 44:1\)](#), s. 112(1)(3), Sch. 16 para. 1(1), **Sch. 17 para. 33**
- C8** S. 33 amended by S.R. & O. 1947/395 (Rev. IV, p. 226: 1947 I, p. 245), reg. 1

*Status: Point in time view as at 01/02/1991.*

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### 34 Saving for certain statutory rights.

(1) The matters subject to which by virtue of section four of this Act the vesting in the Commission of any coal, mine of coal, property or rights is to take effect, and the contract referred to in that section for the sale of any coal, mine of coal, property or rights is to be deemed to have been made, shall include the following rights, that is to say:—

- (a) any right vested in a railway company by virtue of the provisions substituted by Part II of the <sup>M6</sup>Mines (Working Facilities and Support) Act 1923, for sections seventy-eight to eighty-five of the <sup>M7</sup>Railways Clauses Consolidation Act 1845, or by virtue of those sections as originally enacted, any right vested in undertakers by virtue of sections twenty-two to twenty-six of the <sup>M8</sup>Waterworks Clauses Act 1847, and any right vested by virtue of those provisions or of those sections respectively in any other person in a capacity corresponding to that of the company or undertakers thereunder;
- (b) any right vested in a local authority by virtue of the <sup>M9</sup>Public Health Act 1875 (Support of Sewers) Amendment Act 1883; and
- (c) any right to prevent or restrict the working of coal vested in the Crown or in any local authority, [<sup>F21</sup>highway authority][<sup>F21</sup>local roads authority (within the meaning of the Roads (Scotland) Act 1984)] or statutory undertakers by virtue of any enactment or of any order having effect, with or without confirmation by Parliament, under any enactment;

and those rights shall not be treated for the purposes of this Part of this Act as constituting or conferring any interest in the coal or mine in respect of which they are exercisable.

(2) An interest in coal or a mine of coal that arises under a coal-mining lease, the lessee whereunder is a Committee appointed for the purposes of a drainage scheme made under section eighteen of the <sup>M10</sup>Mining Industry Act 1920, shall be a retained interest, and any such Committee that is immediately before the vesting date entitled to the fee simple in any coal or mine of coal held by them for the purposes of such a scheme as aforesaid shall have the right, on making application in writing, in that behalf to the Commission, to a grant from the Commission of a coal-mining lease thereof at a peppercorn rent for such term and on such conditions as they may reasonably require.

#### Textual Amendments

**F21** Words commencing “local roads...” substituted (S.) for “highway authority” by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), ss. 128(1), 156(1), [Sch. 9 para. 31](#)

#### Modifications etc. (not altering text)

**C9** [S. 34](#) amended by S.R. & O. 1947/395 (Rev. IV, p. 226: 1947 I, p. 245), reg. 1

#### Marginal Citations

**M6** 1923 c. 20.  
**M7** 1845 c. 20.  
**M8** 1847 c. 17.  
**M9** 1883 c. 37.  
**M10** 1920 c. 50.

*Status: Point in time view as at 01/02/1991.*

*Changes to legislation: There are currently no known outstanding effects for the Coal Act 1938, Part I. (See end of Document for details)*

35— ..... F22  
40.

**Textual Amendments**

**F22** Ss. 23–31, 35–40, 42(2), 43(3), 45(9)–(11) repealed by Statute Law (Repeals) Act 1973 (c. 39), **Sch. 1 Pt. X**

*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 <sup>M11</sup>Land Registrations 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.

**Marginal Citations**

**M11** 1925 c. 21.

**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 of 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) ..... F23

(3) In this section . . . <sup>F24</sup>“possessions of the Duchy of Cornwall” has the meaning assigned to it by section thirty-seven of the <sup>M12</sup>Duchy of Cornwall Management Act 1863, . . . . .  
F24

**Textual Amendments**

**F23** Ss. 23–31, 35–40, 42(2), 43(3), 45(9)–(11) repealed by Statute Law (Repeals) Act 1973 (c. 39), **Sch. 1 Pt. X**

**F24** Words repealed by Statute Law (Repeals) Act 1973 (c. 39), **Sch. 1 Pt. X**

**Modifications etc. (not altering text)**

**C10** S. 42 extended by Coal Industry Act 1975 (c. 56), **s. 2(10)(a)** and (E.W.) *ibid.*, s. 3(10)

**Marginal Citations**

**M12** 1863 c. 49.

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*Status: Point in time view as at 01/02/1991.*

*Changes to legislation: There are currently no known outstanding effects for the Coal Act 1938, Part I. (See end of Document for details)*

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### 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 <sup>M13</sup>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) . . . . . <sup>F25</sup>
- (4) Sections eight to thirteen, subsections (1) to (3) of section fourteen and section nineteen of this Act, . . . . . <sup>F26</sup> 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 Forestry 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
  - (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 provisions for any requisite modification of the Dean Forest enactments.
- [<sup>F27</sup>The Secretary of State] 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.

*Status: Point in time view as at 01/02/1991.*

*Changes to legislation: There are currently no known outstanding effects for the Coal Act 1938, Part I. (See end of Document for details)*

#### Textual Amendments

- F25** Ss. 23–31, 35–40, 42(2), 43(3), 45(9)–(11) repealed by [Statute Law \(Repeals\) Act 1973 \(c. 39\)](#), **Sch. 1 Pt. X**
- F26** Words repealed by [Statute Law \(Repeals\) Act 1973 \(c. 39\)](#), **Sch. 1 Pt. X**
- F27** Words substituted by virtue of S.R. & O. 1942/1132 (Rev. XV, p. 99: 1942, p. 217), art. 2(1) (2), [Ministry of Fuel and Power Act 1945 \(c. 19\)](#), s. 1(2), **Sch. 1**, S.I. 1957/48 (1957 I, p. 1439), 1969/1498, arts. 2(1), 5(6) and 1970/1537, arts. 2(2), 7(4)

#### Modifications etc. (not altering text)

- C11** [S. 43\(6\)\(7\)](#) amended by S.R. & O. 1947/395 (Rev. IV, p. 226: 1947 I, p. 245), reg. 2

#### Marginal Citations

- M13** [1838 c. 43](#).

## 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;

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

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“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, under-lease, 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 [<sup>F28</sup>the Secretary of State.];

“Registration Act” means the <sup>M14</sup>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 <sup>M15</sup>Mines (Working Facilities and Support) Act 1923, either as originally enacted or as extended by section thirteen of the <sup>M16</sup>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.

#### **Textual Amendments**

**F28** Words substituted by virtue of S.R. & O. 1942/1132 (Rev. XV, p. 99: 1942, p. 217), art. 2(1) (2), [Ministry of Fuel and Power Act 1945 \(c. 19\)](#), s. 1(2), [Sch. 1, S.I. 1957/48 \(1957 I, p. 1439\)](#), 1969/1498, arts. 2(1), 5(6) and 1970/1537, arts. 2(2), 7(4)

#### **Modifications etc. (not altering text)**

**C12** [S. 44](#) extended by [Coal Industry Act 1975 \(c. 56\)](#), s. 2(10)(b) and (E.W.) *ibid.*, s. 3(10)

#### **Marginal Citations**

**M14** [1937 c. 56](#).

**M15** [1923 c. 20](#).

**M16** [1926 c. 28](#).

## **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 proestandum* “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 sub-lease granted by a superior lessee; “mortgage” means a heritable security and “mortgagee” and “mortgagor” respectively mean the creditor and 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.

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*Status: Point in time view as at 01/02/1991.*

*Changes to legislation: There are currently no known outstanding effects for the Coal Act 1938, Part I. (See end of Document for details)*

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- (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 <sup>M17</sup>Conveyancing (Scotland) Act 1924, exclusive of a real burden *ad factum proestandum* 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 <sup>M18</sup>Lands Clauses Consolidation Act 1845, and to section eighty thereof there shall be substituted respectively references to the <sup>M19</sup>Lands Clauses Consolidation (Scotland) Act 1845, and to section seventy-nine thereof; for references to the <sup>M20</sup>Railways Clauses Consolidation Act 1845, and to sections seventy-eight to eighty-five thereof there shall be substituted respectively references to the <sup>M21</sup>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) . . . . . <sup>F29</sup>
- (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

*Status: Point in time view as at 01/02/1991.*

*Changes to legislation: There are currently no known outstanding effects for the Coal Act 1938, Part I. (See end of Document for details)*

improvements used exclusively for the purpose of working or cleaning such coal, entered in any Valuation Roll . . . <sup>F30</sup>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 . . . <sup>F31</sup> 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.

#### **Textual Amendments**

**F29** Ss. 23–31, 35–40, 42(2), 43(3), 45(9)–(11) repealed by Statute Law (Repeals) Act 1973 (c. 39), **Sch. 1 Pt. X**

**F30** Words repealed by Statute Law (Repeals) Act 1986 (c. 12), s. 1(1), **Sch. 1 Pt. VII**

**F31** Words repealed by Valuation and Rating (Scotland) Act 1956 (c. 60), **Sch. 7 Pt. IV**

#### **Modifications etc. (not altering text)**

**C13** S. 45 extended by Coal Industry Act 1975 (c. 56), **s. 2(10)(c)**

#### **Marginal Citations**

**M17** 1924 c. 27.

**M18** 1845 c. 18.

**M19** 1845 c. 19.

**M20** 1845 c. 20.

**M21** 1845 c. 33.

**Status:**

Point in time view as at 01/02/1991.

**Changes to legislation:**

There are currently no known outstanding effects for the Coal Act 1938, Part I.