CHAPTER 56.

An Act to make provision for the ascertainment and registration of particulars as to proprietary interests in unworked coal and mines of coal and in certain associated minerals, property and rights in land, and for purposes connected therewith. [30th July 1937.]

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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 :—

Registration of particulars of ownership.

1.—(1) For the purpose of recording such particulars as are hereinafter mentioned as to proprietary interests that subsist in coal and mines of coal in Great Britain and in certain property and rights held in association therewith, the Board of Trade shall establish a register, to be called " the coal holdings register."

(2) The Board shall receive applications duly made to them for the registration of particulars in the register, and, after such applications have been examined in accordance with the provisions of this Act, shall register particulars of the facts ascertained upon the examination thereof.

(3) Registrations under this Act shall be effected in respect of such proprietary interests or groups of proprietary interests as are, under the provisions of the First Schedule to this Act, to be treated as constituting

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Any such interest or group of interests is in this Act referred to as a " holding."

(4) The matters whereof particulars may be registered in respect of any holding shall be—

(*a*) the coal and mines of coal in which the holding subsists;

(*b*) the property and rights which are held in association with such coal and mines or any of them and in which the holding subsists;

(*c*) the servitudes, restrictive covenants and other matters subject to which the coal hereditaments in which the holding subsists or any of them are or is held;

(*d*) such matters of title as are requisite for the identification of the holding as a unit of separate ownership; and

(*e*) such other matters, if any, relating to the coal hereditaments in which the holding subsists, or to the title thereto, as appear to the Board to be material for the purpose of rendering the information as to proprietary interests recorded in the register complete.

(5) The provisions of Part I of the Second Schedule to this Act shall have effect with respect to the making and examination of applications for registration, to the ascertainment of the facts whereof particulars are to be registered, to the registration of particulars, and to the rectification of the register.

(6) The provisions of Part II of the Second Schedule to this Act shall have effect with respect to the payment by the Board of costs incurred in giving effect to the provisions of this Act.

(7) The person on whose application particulars have been registered in respect of a holding and any person authorised by him or by an order of the High Court or by rules made by the Board, but no other person, may inspect and make copies of and extracts from the entries in the register relating to the holding.

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Expenses of Board of Trade.

2. All expenses of the Board of Trade under this Act shall be defrayed out of moneys provided by Parliament, and shall not be taken into account in computing the amount of the expenses of the Department of Mines for the purposes of the limit imposed by subsection (2) of section five of the Mining Industry Act, 1920, upon the expenses of that Department.

10 & 11 Geo. 5. c. 50.

Definition of "coal" and application of Act to certain associated minerals.

3.—(1) In this Act "coal" means bituminous coal, cannel coal and anthracite, and has also the extended meaning assigned to it by subsection (2) of this section.

(2) This Act shall have effect in relation to minerals or substances other than coal, that are comprised in a lease which confers a right to work and carry away both coal and those minerals or substances, in like manner in all respects as if they had been coal, and references in this Act to coal shall be construed accordingly.

(3) In this Act references to coal, other than references to the carrying away, making merchantable or disposing thereof, shall be construed as references to coal that is unworked, that is to say, not so severed as to have become a chattel.

Interpretation.

4. In this Act, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them respectively, that is to say:—

"Coal hereditaments" means coal and mines of coal and property and rights which are held in association with any coal or mine of coal;

"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;

"Interested" means, in relation to a person referred to as interested in any coal or mine of coal, or in any other land, any person entitled to, or to exercise, or interested in, or in the exercise of, any estate, interest, charge or power in, on or over that coal or mine or that other land, as the case may be, other than a person entitled

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or interested as aforesaid 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;

"Lease" includes an underlease and an agreement under which the right to have a lease or underlease granted is subsisting, and in relation to such an agreement "estate owner" means the person entitled to have vested in him the term agreed to be created; neither "lease" nor "underlease" includes a mortgage; "lease" and "underlease" each include a licence (whether personal or by way of profit à prendre) that confers a right to work and carry away coal or to use a mine of coal for a coal-mining purpose, and in relation to such a licence the expression "reversion" and other expressions importing a reference to a lease shall be construed accordingly with the requisite adaptations;

"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;

"Proprietary interest" means any interest in coal hereditaments with the exception of—

(*a*) an interest arising under a coal-mining lease in coal hereditaments comprised therein that are not comprised in any underlease derived out of that lease; and

(*b*) an interest arising by virtue of the grant of a right under the Mines (Working Facilities and Support) Act, 1923, either as originally enacted or as extended by section thirteen of the Mining Industry Act, 1926;

13 & 14 Geo. 5. c. 20.
16 & 17 Geo. 5. c. 28.

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

"Servitude" means any liberty, privilege, easement, right or advantage annexed to any land and adversely affecting other land, 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 appertaining thereto or to any part thereof.

Application to Scotland.

5. This Act shall apply to Scotland subject to the following modifications:—

(1) "restrictive covenant" means an agreement or stipulation imposing a restriction and includes a real burden ad factum praestandum; "underlease" means sub-lease, and any reference to an underlease derived out of another lease shall be construed as a reference to a sub-lease granted by a lessee; for any reference to a mortgage there shall be substituted a reference to a heritable security; "chattel" means corporeal moveable; and "demised" means let;

(2) for any reference to the High Court a reference to the Court of Session shall be substituted;

(3) any reference to a charge or power in, on or over, any subjects shall include a reference to a heritable security affecting such subjects;

(4) "heritable security" has the like meaning as in the Conveyancing (Scotland) Act, 1924, except that it does not include a real burden ad factum praestandum. 14 & 15 Geo. 5. c. 27.

Short title and extent.

6.—(1) This Act may be cited as the Coal (Registration of Ownership) Act, 1937.

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

(3) This Act shall not extend to any part of the Forest of Dean or of the Hundred of Saint Briavels in the County of Gloucester in which the privileges of free miners are exercisable.

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SCHEDULES.

Section 1.

FIRST SCHEDULE.

UNITS OF SEPARATE OWNERSHIP.

General.

1.—(1) Subject to the provisions of paragraph 2 of this Schedule, each of the following proprietary interests, or groups of proprietary interests, in coal hereditaments shall constitute a unit of separate ownership for the purposes of this Act, namely :—

(*a*) each freehold reversion (that is to say, in the case of all the coal and mines of coal that are comprised in a coal-mining lease derived immediately out of the fee simple and in the case of property and rights held in association with any such coal or mine, the interest therein of the estate owner in respect of the fee simple in the coal and mines together with the interests therein of all persons claiming under him);

(*b*) each leasehold reversion (that is to say, in the case of all the coal and mines of coal that are comprised in a coal-mining lease that is an underlease and in the case of property and rights held in association with any such coal or mine, the interest therein of the estate owner in respect of the term of years out of which that underlease is immediately derived together with the interests therein of all persons claiming under him);

(*c*) each freehold in possession (that is to say, in the case of all the coal and mines of coal that are not comprised in any coal-mining lease and are in the legal ownership as respects the fee simple of the same estate owner and in the case of property and rights held in association with any such coal or mine, the interest therein of the estate owner in respect of the fee simple in the coal and mines together with the interests therein of all persons claiming under him).

(2) In this paragraph the expression " person claiming under " means, in relation to a person referred to as claiming under the estate owner in respect of a fee simple, or under the estate owner in respect of a term of years, a person interested in respect of—

(*a*) an equitable interest or an equitable power enforceable against that estate owner (including any such interest or power which, if subsisting at law, would fall within any of the following heads);

(*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;

(*d*) an interest arising 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 underlease derived out of a lease other than a coal-mining lease;

and that expression includes also, in relation to a person referred to as claiming under the estate owner in respect of a fee simple, a person interested in respect of a right saved by paragraph (5) of the Twelfth Schedule to the Law of Property Act, 1922 (which relates to land formerly copyhold). 12 & 13 Geo. 5. c. 16.

2. Provision may be made by rules made by the Board of Trade for the consolidation of two or more units of separate ownership as ascertained under the preceding paragraph, or for the division of any unit of separate ownership as so ascertained into two or more units, or for treating as constituting a separate unit of ownership any proprietary interest or interests that would otherwise be comprised in a unit or units of separate ownership as so ascertained.

Application to Scotland.

3. This Schedule shall, in its application to Scotland, have effect as if for paragraph 1 the following paragraph were substituted:—

"(1) Subject to the provisions of paragraph 2 of this Schedule, each of the following proprietary interests, or groups of proprietary interests, in coal hereditaments shall constitute a unit of separate ownership for the purpose of this Act, namely:—

(*a*) in the case of all the coal and mines of coal that are comprised in a coal-mining lease granted by the proprietor of the dominium utile and in the case of property and rights held in association with any such coal or mine, the interest therein of such proprietor, together with the interests of all persons claiming under him;

(*b*) in the case of all the coal and mines of coal that are comprised in a coal-mining lease (being a sub-lease) and, in the case of property and rights held in association with any such coal or mine, the interest therein of the lessee who is the landlord under

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the sub-lease together with the interests of all persons claiming under him;

(*c*) in the case of all the coal and mines of coal that are not comprised in any coal-mining lease and are in the ownership of the same person as proprietor of the dominium utile, and in the case of property and rights held in association with any such coal or mine, the interest therein of that person together with the interests therein of all persons claiming under him.

(2) In this paragraph—

the expression " person claiming under " means—

(*a*) in relation to a person referred to as claiming under the proprietor of the dominium utile, the superior, a creditor in a heritable security, a lessee under a lease other than a coal-mining lease, a person having a personal title capable of being completed by infeftment, a person entitled to demand a conveyance of the subjects by virtue of a valid and enforceable contract, and a person infeft or entitled to take infeftment in an interest in the annual rents of the subjects, and

(*b*) in relation to a person claiming under a lessee, a creditor in a heritable security, a sub-lessee under a sub-lease not being a coal-mining lease, a person having a personal title capable of being completed by registration in the appropriate register of sasines, a person entitled to demand an assignation or sub-lease of the lease by virtue of a valid and enforceable contract, and a person having a registered title or a title capable of being completed by registration to an interest in such lease; and

the expression " 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."

Section 1.

SECOND SCHEDULE.

PART I.

PROCEDURE AS TO REGISTRATION.

1.—(1) An application for the registration of particulars in respect of a holding must be in the prescribed form, and there must

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be furnished to the Board of Trade therewith a statement in the prescribed form, and verified in such manner by statutory declaration or otherwise as the Board may reasonably require, of all the circumstances of the holding relevant to the matters specified in paragraphs (*a*) to (*d*) of subsection (4) of section one of this Act, including, as regards the matters specified in the said paragraph (*d*)—

(*a*) in the case of a holding consisting of a freehold or leasehold reversion, the provisions of the lease or underlease on which that reversion is immediately expectant;

(*b*) in the case of a holding consisting of a freehold in possession, the identity of the estate owner in respect of the fee simple in the coal and mines of coal in which the holding subsists; and

(*c*) in the case of a holding constituted by virtue of rules made under paragraph 2 of the First Schedule to this Act, such items as may be prescribed.

(2) An application for the registration of particulars in respect of a holding must be made by a person who has a proprietary interest that constitutes or is comprised in the holding:

Provided that the Board may receive an application made by a person who has not such an interest as aforesaid if they are satisfied that, by reason of that person's being concerned in the administration of the holding or on other grounds appearing to them to be sufficient, it is convenient that the application should be made by him.

(3) The person by whom an application was made shall, on being requested by the Board so to do, give to them such further information with respect to the matters specified in paragraphs (*a*) to (*d*) of subsection (4) of section one of this Act, and such information with respect to the matters specified in paragraph (*e*) thereof, as the Board may reasonably require.

(4) This paragraph shall, in its application to Scotland, have effect as if for heads (*a*) and (*b*) of sub-paragraph (1) the following were substituted:—

"(*a*) in the case of a holding consisting of the interests specified in head (*a*) or head (*b*) of sub-paragraph (1) of the paragraph which is directed by paragraph 3 of the First Schedule to this Act to be substituted for paragraph 1 thereof, the provisions of the lease or sub-lease;

(*b*) in the case of a holding consisting of the interests specified in head (*c*) of the aforesaid sub-paragraph, the identity of the proprietor of the dominium utile; and ".

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2.—(1) The Board shall examine an application duly made for the registration of particulars in respect of a holding with respect to the following matters, that is to say,—

(*a*) whether all the property and rights, of which particulars are sought to be registered as being held in association with any coal or a mine to which the application relates, are property and rights so held and whether there are any other property or rights so held which are not stated to be so held;

(*b*) whether all the servitudes, restrictive covenants and other matters, of which particulars are sought to be registered as being matters subject to which any coal hereditaments to which the application relates are held, are matters subject to which those coal hereditaments are held and whether those coal hereditaments are held subject to any other such matters not stated in the application;

(*c*) whether the holding subsists in all the coal hereditaments in which it is stated to subsist; and

(*d*) any other matter whose consideration appears to the Board to be requisite in connection with the ascertainment of the facts material to the proposed registration;

and the Board shall prepare a draft of the particulars to be registered in respect of the holding.

(2) Before settling the draft particulars the Board shall notify the fact of the application having been made to—

(*a*) any person who satisfies the Board that he has a proprietary interest comprised in the holding and who, at any time after the commencement of this Act but not later than the expiration of one month from the date on which the application was received, has served on the Board a request in the prescribed form to be notified of any such application in respect of the holding received by the Board; and

(*b*) any person who, having regard to a statement or information furnished in connection with an application that has been duly made by him for the registration of particulars in respect of another holding, appears to the Board to be concerned;

and shall take such steps as the Board think best for ascertaining whether any difference arises as to the particulars to be registered either between the Board and the person by whom the application was made or any of the persons notified under this sub-paragraph, or between any two or more of those persons, and for resolving any such difference by agreement.

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(3) If on the examination of the application it appears to the Board that any issue arises in connection with the ascertainment of the facts material to the proposed registration whose determination by the High Court is requisite, the Board may, before settling the draft particulars, refer it for determination to the Court.

(4) After giving effect to the preceding provisions of this paragraph the Board shall settle the draft particulars and shall send a copy thereof to each of the persons specified in sub-paragraph (2) of this paragraph, and any of those persons who objects to the registration of any of the particulars specified in the draft as being incorrect in any material respect shall be entitled at any time within one month after the copy of the draft has been sent to him to make an application to the High Court for the variation of the particulars as respects any matter not already determined by the Court.

(5) When copies of a draft have been sent under the last preceding sub-paragraph and either no application has been made to the Court thereunder within the time therein mentioned or any application so made has been disposed of by the Court, the Board shall register in respect of the holding the particulars as specified in the draft or as varied by the Court, as the case may require, and shall send to each of the persons specified in sub-paragraph (2) of this paragraph notice of the registration of the particulars, either stating that they have been registered as specified in the draft or, if they have been varied, setting out the particulars registered.

(6) On any application to the Court under this Part of this Schedule the Board and the persons specified in sub-paragraph (2) of this paragraph shall be made parties to the application, and if the Board represent to the Court that it is expedient that any person other than the Board or the persons aforesaid should be made a party to the application, the Court may give a direction to that effect.

3.—(1) Information given to the Board in relation to an application for registration of particulars in respect of a holding, whether in a statement furnished with the application or otherwise, shall be related to the circumstances as existing at the date when the information is given.

(2) Where after any such information has been given to the Board any change of circumstances takes place materially affecting the matters as to which the information was given, it shall be the duty of the person by whom the application was made and of any other person having a proprietary interest comprised in the holding, forthwith to inform the Board of the change, if it is known to him and unless he has ascertained that information of the change has already been given to the Board.

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(3) Where it appears to the Board, from information given to them under the preceding sub-paragraph or otherwise, that the particulars registered in respect of a holding are incorrect, or that the holding itself does not subsist, the Board shall rectify the register in such manner as may be agreed between them and the persons specified in sub-paragraph (2) of the last preceding paragraph, or, in case of difference, shall notify to those persons the alterations that the Board propose to make in the register, and the provisions of sub-paragraphs (4) to (6) of the last preceding paragraph shall have effect in relation thereto as they have effect in relation to draft particulars.

(4) References in this Schedule to any of the persons specified in sub-paragraph (2) of the last preceding paragraph shall, in a case in which such a person dies or becomes incapable of acting, be construed as including references to a person substituted for that person in accordance with rules made under the next succeeding paragraph.

4.—(1) Subject to the preceding provisions of this Schedule, the Board may make rules prescribing the procedure to be followed in giving effect to the provisions of section one of this Act with respect to any matter other than a matter with respect to which rules of Court may be made.

(2) Where any rules are made by the Board under this Schedule a notice of the rules having been made, and of the place where copies of them can be purchased, shall be published in the London Gazette and in the Edinburgh Gazette.

(3) Without prejudice to any power of the High Court the Board shall have power to extend, upon any ground deemed by them sufficient, any limit of time imposed by this Act or by any rule made by the Board thereunder for the doing of any act or thing.

PART II.

PAYMENT OF COSTS BY THE BOARD.

5.—(1) Subject to the provisions of this paragraph, the Board shall pay the costs (including costs of or incidental to proceedings on an application made to the Court under Part I of this Schedule) reasonably incurred by the person by whom an application for the registration of particulars in respect of a holding is duly made in giving effect in relation to that holding to the provisions of Part I of this Schedule or of the rules made thereunder relating to the rights and duties of a person by whom an application is made, and for the purposes of this provision costs so incurred by that person as a person notified, under sub-paragraph (2) (*b*) of paragraph 2 of this Schedule, of an application received in respect of another holding shall be deemed to have been incurred in relation to the first-mentioned holding:

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Provided that, if two or more applications are made in relation to the same holding, the liability of the Board under this sub-paragraph shall be limited to such a sum as would have been payable by them if a single application only had been made, so however that the Board may pay costs in excess of that sum in any case in which it appears to them that the making of more than one application was justified having regard to any special circumstances.

(2) Subject to the provisions of this paragraph, where any facts particulars whereof are registered in respect of a holding have been ascertained from information furnished by a person notified, under sub-paragraph (2) (*a*) of paragraph 2 of this Schedule, of an application received in respect thereof, the Board shall pay the costs (including costs of or incidental to proceedings on an application made to the Court under Part I of this Schedule) reasonably incurred by him in giving effect in relation to that holding to the provisions of Part I of this Schedule or of the rules made thereunder relating to the rights and duties of a person so notified.

(3) The Board shall not be liable to pay any such costs as aforesaid incurred either—

(*a*) in relation to a holding in respect of which no application for the registration of particulars is duly made within the period of six months beginning as to England and Scotland respectively on the date on which notice is first published in the London Gazette and in the Edinburgh Gazette respectively of rules having been made by the Board with respect to the procedure for the making of applications, or the date on which the holding comes into existence, whichever is the later, or, in the case of a holding constituted by virtue of rules made under paragraph 2 of the First Schedule to this Act, within such extended period as may be prescribed, so however that this provision shall not have effect as regards a holding in respect of which application is made after the expiration of the said period in a case in which it appears to the Board that sufficient cause is shown for no application having been made within the said period; or

(*b*) in relation to a holding in the case of which it appears to the Board that there is no reasonable ground for believing that any coal hereditaments in which the holding is stated to subsist have any marketable value; or

(*c*) by a person who has neglected to comply with any of the requirements of Part I of this Schedule or of the rules

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made thereunder relating to the information to be given by him, whether on the original making of the application or thereafter.

The High Court shall have power, on the application of a person aggrieved by a denial on the part of the Board by virtue of this sub-paragraph of liability to pay any such costs as aforesaid, to give such directions as to the matter in question as appear to the Court to be just.

(4) Subject to the provisions of this paragraph, the Board shall pay the costs of or incidental to proceedings on an application made to the Court under Part I of this Schedule reasonably incurred by a person whom the Court, under sub-paragraph (6) of paragraph 2 or under that sub-paragraph as applied by sub-paragraph (3) of paragraph 3 of this Schedule, directs to be made a party to the application.

(5) The Court may direct that the Board shall not be liable to pay any such costs as aforesaid incurred by any party to an application made to the Court under Part I of this Schedule who appears to the Court to have made such an application or prosecuted proceedings thereon unreasonably or to have been guilty of any such unreasonable failure to agree with the Board or with any other party, or of any such negligence or default, as to disentitle him to payment of his costs.

(6) The Board shall have power to enter into undertakings to pay, and to pay, any costs other than as aforesaid reasonably incurred by any person in furnishing to the Board information for the purposes of this Act.

(7) Any costs that the Board are liable under or by virtue of this Part of this Schedule to pay shall, if the Board or the person entitled to payment thereof so requires, be taxed and settled by the High Court, and any apportionment required to be made for the purposes of the proviso to sub-paragraph (1) of this paragraph shall, if any person concerned in the apportionment so requires, be made by the High Court.

This sub-paragraph shall, in its application to Scotland, have effect as if for references to the High Court there were substituted references to the Auditor of the Court of Session.

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