



Coal Mining Subsidence Act 1991

1991 CHAPTER 45

PART V

SUPPLEMENTAL

Claims

37 Avoidance of double claims.

- (1) A person entitled to give a damage notice under Part II of this Act in respect of subsidence damage to any property shall not be entitled to proceed at the same time in respect of the same damage to that property with both—
 - (a) such a notice; and
 - (b) a claim against the Corporation or a licensee of the Corporation for damages or compensation arising apart from this Act;but a person so entitled may, subject to subsection (2) below, elect which notice or claim he will proceed with for the time being.
- (2) Where any person proceeds with such a notice or claim as is mentioned in paragraph (a) or (b) of subsection (1) above (“the original notice or claim”), he shall not be entitled to proceed with such a notice or claim as is mentioned in the other of those paragraphs unless—
 - (a) it is determined, whether by agreement or otherwise, that he is entitled to none of the relief claimed by the original notice or claim; or
 - (b) that notice or claim is withdrawn before it is determined.
- (3) Where two or more persons are entitled to give a damage notice under Part II of this Act in respect of the same subsidence damage to any property, subsections (1) and (2) above shall apply as if any election made by any one of them to proceed with such a notice had also been made by the other or others of them.
- (4) The provisions of this Act and of any other enactment making provision with respect to rights and liabilities between the Corporation and any government department, local authority or statutory undertakers in respect of—

Changes to legislation: There are currently no known outstanding effects for the Coal Mining Subsidence Act 1991, Cross Heading: Claims. (See end of Document for details)

- (a) the working of minerals under or adjacent to any property; or
 - (b) the leaving of minerals unworked for the support of any property,
- shall have effect subject to the terms of any agreement with respect to such rights and liabilities which has been entered into between the Corporation and the department, authority or undertakers otherwise than in connection with a disposition of an interest in land and is for the time being subsisting.

Modifications etc. (not altering text)

- C1** S. 37 amended (31.10.1994) by 1994 c.21, s. 43, **Sch. 6 para. 7** (with ss. 40(7), 66); S.I. 1994/2553, **art. 2**

Commencement Information

- II** S. 37 wholly in force at 30. 11. 1991 see s. 54(2) and S.I. 1991/2508, **art.2**

38 Reimbursement of successful claimants' expenses.

- (1) Where the Corporation—
 - (a) take any remedial action; or
 - (b) make any payment to, or make any living accommodation available to, any person under Part III of this Act,
 they shall also pay any costs or expenses to which subsection (2) below applies.
- (2) Subject to subsections (3) to (5) below, this subsection applies to any costs or expenses reasonably incurred by the claimant or any other person interested or, as the case may be, by the person in question—
 - (a) for the purposes of, or for purposes connected with, the preparation and prosecution of his damage notice or claim; or
 - (b) in the case of costs or expenses incurred by the claimant before the subsidence damage became evident, with a view to the possible preparation and prosecution of his damage notice.
- (3) Subsection (2) above does not apply to any costs or expenses incurred by the claimant or any other person interested—
 - (a) in securing or attempting to secure the agreement or consent of any other person to the exercise by the Corporation of any such power as is mentioned in subsection (1)(a) of section 41 below; or
 - (b) in pursuing an application under subsection (2) of that section.
- (4) Subsection (2) above does not apply to any costs or expenses incurred by the claimant or any other person interested more than four years before the giving of his damage notice.
- (5) Subsection (2) above does not apply to any costs or expenses incurred in or in connection with any proceedings before any tribunal, court or other person if an order for their payment has been or could have been made by that tribunal, court or other person.
- (6) The Secretary of State may by order—

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- (a) substitute for the period specified in subsection (4) above (whether as originally enacted or as previously amended under this subsection) such other period as he thinks fit; or
- (b) direct that that subsection shall not apply in such circumstances as may be specified in the order.

Modifications etc. (not altering text)

C2 S. 38 amended (31.10.1994) by 1994 c. 21, s. 43, **Sch. 6 para. 7** (with ss. 40(7), 66); S.I. 1994/2553, **art. 2**

Commencement Information

I2 S. 38 wholly in force at 30. 11. 1991 see s. 54(2) and S.I. 1991/2508, **art. 2**

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Textual Amendments

F1 S. 39 repealed (31.10.1994) by 1994 c. 21, s. 67, **Sch. 11 Pt. II** (with ss. 40(7), 66); S.I. 1994/2553, **art. 2**

Changes to legislation:

There are currently no known outstanding effects for the Coal Mining Subsidence Act 1991,
Cross Heading: Claims.