



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 - (b) that notice or claim is withdrawn before it is determined.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—

(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.

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—
- (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.

39 False information in support of claims

If any person for the purpose of obtaining for himself or any other person any benefit under this Act—

- (a) furnishes any information which he knows to be false in a material particular, or recklessly furnishes any information which is false in a material particular; or
 - (b) with intent to deceive withholds any material information,
- he shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.

Disputes and complaints

40 Disputes: general

- (1) Except as otherwise provided by or under this Act, any question arising under this Act shall, in default of agreement, be referred to and determined by the Lands Tribunal.
- (2) Where in any proceedings under this Act the question arises whether any damage to property is subsidence damage, and it is shown that the nature of the damage and the circumstances are such as to indicate that the damage may be subsidence damage, the onus shall be on the Corporation to show that the damage is not subsidence damage.
- (3) The tribunal, court or other person by whom any question is heard and determined under this Act may make such orders as may be necessary to give effect to its or his determinations and in particular may by order—
 - (a) require the Corporation to carry out any obligations imposed upon them by this Act within such period as the tribunal, court or person may direct;
 - (b) award damages in respect of any failure of the Corporation to carry out any such obligations.

41 Disputes about withholding of agreement or consent

- (1) This section applies where in the case of any property—
 - (a) the agreement or consent of two or more persons is required for the Corporation to exercise any power conferred by section 5(3) or (5), 10(2)(b) or 33(2)(a) above; and
 - (b) the Corporation have reached agreement with or obtained the consent of one or more, but not both or all, of those persons.
- (2) If, on an application made by any of those persons or the Corporation, it appears—
 - (a) in the case of property in England and Wales, to a county court; or
 - (b) in the case of property in Scotland, to the sheriff,that any person whose agreement or consent is so required has withheld his agreement or consent unreasonably, the court or the sheriff may order that the provision conferring the power in question shall apply in the case of the property as if the Corporation had reached agreement with or obtained the consent of that person.

42 Disputes about access etc. to premises

- (1) If the occupier of any premises refuses to afford the Corporation such facilities as they may require for the purposes of any provision of this Act (other than section 36 above) to enter upon, inspect and execute works on those premises, then—
 - (a) in the case of premises in England and Wales, a magistrates' court on a complaint made by the Corporation;

(b) in the case of premises in Scotland, the sheriff on an application so made, may confer such powers to enter, inspect and execute works on the premises as may appear to the court or the sheriff to be necessary, and may order the occupier to permit the exercise of those powers.

(2) Nothing in subsection (1) above shall apply to any premises occupied by or on behalf of the Crown.

43 Determination of disputes by arbitration

(1) The Secretary of State may give directions to the Corporation—

- (a) requiring them, before a date specified in the directions, to make and submit for his approval a scheme making arbitration available for the determination of any dispute arising under this Act which is of a description so specified; and
- (b) imposing requirements with respect to the terms on which arbitration is to be made available under the scheme.

(2) Such directions may also require a scheme to include—

- (a) provision for the appointment of a person independent of the Corporation to be responsible for ensuring the proper operation of the scheme and for the provision of advice about the scheme to persons who may wish to have a dispute determined under it;
- (b) provision for the making of reports about the operation of the scheme, or the furnishing of information, to any person; and
- (c) such other provision as the Secretary of State considers necessary or expedient.

(3) Where a scheme is submitted to the Secretary of State in pursuance of such directions—

- (a) the scheme may be approved by him with or without modifications; and
- (b) approval may be given for the scheme for a period specified in the approval; and the Secretary of State may at any time withdraw approval for a scheme which is approved under this subsection.

(4) While it is in force, a scheme approved under subsection (3) above—

- (a) shall have effect, in relation to any dispute to which it relates, as a binding offer of arbitration by the Corporation on the terms specified in the scheme; and
- (b) shall be treated, in relation to any dispute referred to arbitration under it, as an arbitration agreement.

(5) If the Corporation fail to comply with any directions under subsection (1) above, the Secretary of State may himself make such a scheme as is mentioned in that subsection; and a scheme so made shall have effect as if it were an approved scheme made by the Corporation.

44 Time limits for certain disputes

(1) This section applies to any question arising under this Act as to whether the Corporation are in breach of their remedial obligation in respect of any subsidence damage.

- (2) No question to which this section applies shall be heard and determined by any tribunal, court or other person unless the necessary reference is made, or the necessary proceedings are instituted, before the end of whichever of the following periods last expires, namely—
- (a) the period of three years beginning with the earliest date on which the Corporation are in breach of their remedial obligation; and
 - (b) the period allowed by section 3 above for giving a damage notice with respect to the damage (the period of six years beginning with the date given by subsection (3) of that section).
- (3) For the purposes of subsection (2) above, any period during which the Corporation’s remedial obligation is subject to the terms of a stop notice shall be disregarded.

45 Investigation of complaints

- (1) The Secretary of State may give directions to the Corporation—
- (a) requiring them, before a date specified in the directions, to make and submit for his approval a scheme for the investigation and determination of complaints about matters arising under this Act which are of a description so specified; and
 - (b) imposing requirements with respect to the terms on which such complaints are to be investigated and determined under the scheme.
- (2) Such directions may also require a scheme to include—
- (a) provision for the appointment of a person independent of the Corporation (“the adjudicator”) to be responsible for ensuring the proper operation of the scheme and for the provision of advice about the scheme to persons who may wish to make complaints under it;
 - (b) provision as to the action to be taken by the Corporation in response to determinations under the scheme;
 - (c) provision for the making of reports about the operation of the scheme, and the giving of information, to any person; and
 - (d) such other provision as the Secretary of State considers necessary or expedient.
- (3) Where a scheme is submitted to the Secretary of State in pursuance of such directions—
- (a) the scheme may be approved by him with or without modifications; and
 - (b) approval may be given for the scheme for a period specified in the approval; and the Secretary of State may at any time withdraw approval for a scheme which is approved under this subsection.
- (4) While a scheme approved under subsection (3) above is in force—
- (a) the adjudicator shall investigate and determine any qualifying complaint which is duly made and shall discharge any other obligations imposed on him by the scheme; and
 - (b) the Corporation shall discharge any obligations so imposed on them.
- (5) In subsection (4) above “qualifying complaint”, in relation to an approved scheme, means a complaint which—

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- (a) relates to anything done or omitted to be done by the Corporation in connection with any matter arising under this Act which is of a description specified in the scheme; and
 - (b) is made on the ground that the act or omission complained of—
 - (i) constitutes unfair treatment or maladministration on the part of the Corporation or any person acting on their behalf; and
 - (ii) has caused loss, expense or inconvenience to the complainant; and
 - (c) is not excluded from investigation and determination by or under the scheme.
- (6) If the Corporation fail to comply with any directions under subsection (1) above, the Secretary of State may himself make such a scheme as is mentioned in that subsection; and a scheme so made shall have effect as if it were an approved scheme made by the Corporation.

Notices, information and reports

46 Notices to property owners etc

- (1) Subject to subsection (2) below, where it is proposed to carry on any underground coal-mining operations, the Corporation—
 - (a) shall give to the owners or occupiers of any land which might be affected by subsidence as a result of the operations notice that there is a risk of their land being so affected; and
 - (b) shall give notice that they have done so to any organisation appearing to them to be representative of those owners or occupiers.
- (2) Subsection (1) above shall not apply in any case where—
 - (a) the underground coal-mining operations in question are proposed to be carried on by a licensee of the Corporation whose licence was granted before 1st May 1991; and
 - (b) the Corporation have no knowledge of the licensee's proposals.
- (3) Where notice has been given under subsection (1)(a) above in respect of any land, the Corporation shall give to the owners or occupiers notice of any of the following facts, that is to say—
 - (a) any decision not to proceed with the proposed operations;
 - (b) anything which gives the Corporation reason to believe that there is no longer any risk of the land being affected by subsidence; and
 - (c) the discontinuance of any operations which have been carried on.
- (4) Where notice has been given under subsection (1)(a) above in respect of any land, the Corporation shall from time to time, until notice is given under subsection (3) above in respect of that land, give notice to the owners or occupiers reminding them of any risk there may be of the land being, or having been, affected by subsidence.
- (5) The Secretary of State may by regulations make provision as respects—
 - (a) the contents and form of notices under this section;
 - (b) the times at which and the manner in which such notices are to be given;
 - (c) any information which is to accompany such notices.
- (6) If no other time for giving a notice under subsection (4) above is prescribed under subsection (5)(b) above, the Corporation shall give the notice within the period of one

year beginning with the date on which the most recent notice under this section was given.

- (7) If no other manner for giving a notice under this section is so prescribed, the Corporation shall take all reasonably practicable steps for bringing the notice to the attention of the person to whom the notice is to be given.
- (8) In this section—
- (a) references to land include references to any buildings, structures or works on, in or over land; and
 - (b) references, in relation to any land, to the owners or occupiers include references to any person who is the owner or occupier of any part of the land or is liable to make good in whole or in part any subsidence damage affecting the land.

47 Notices to local authorities

- (1) Subject to subsection (3) below, where it is proposed to carry on any underground coal-mining operations, the Corporation shall give notice of the operations to any local authority whose area includes land which may be affected by subsidence as a result of the operations.
- (2) Subject to subsection (3) below, where any underground coal-mining operations are being carried on, the Corporation shall give notice of such facts as may be prescribed to any local authority whose area includes land which has been or may be affected by subsidence as a result of the operations.
- (3) Subsections (1) and (2) above shall not apply in any case where—
- (a) the underground coal-mining operations in question are proposed to be or are being carried on by a licensee of the Corporation whose licence was granted before 1st May 1991; and
 - (b) the Corporation have no knowledge of the licensee’s proposals or activities.
- (4) The Secretary of State may by regulations make provision as respects—
- (a) the contents and form of notices under this section;
 - (b) the times at which such notices are to be given;
 - (c) any information which is to accompany such notices.
- (5) Each local authority shall—
- (a) secure that copies of all notices and other information received by them under this section are made available, at all reasonable times, for inspection by the public free of charge; and
 - (b) provide facilities for obtaining copies of such documents on payment of a reasonable fee.
- (6) In this section “local authority” means—
- (a) in relation to England and Wales, the council of a district or non-metropolitan county;
 - (b) in relation to Scotland, a district or islands council.

48 Provision of information on request

- (1) The Secretary of State may make regulations requiring the Corporation, on a request made to them by any person in such form (if any) as may be prescribed, to provide that person with any information which—
 - (a) relates to, or to subsidence resulting from, coal-mining operations;
 - (b) is of a prescribed description; and
 - (c) is in their possession or is reasonably available to them.
- (2) The descriptions of information which may be prescribed include in particular information relating to the proximity to any particular land of—
 - (a) any coal workings which have been, are being or are proposed to be carried on by any person;
 - (b) any geological or other physiographical feature which is capable of affecting the occurrence of subsidence.
- (3) Regulations under this section may—
 - (a) provide that the obligation to give information applies only where the request is made in prescribed circumstances and by a person of a prescribed description; and
 - (b) require the payment of fees by persons making requests in prescribed cases.

49 Reports on operation of Act

- (1) The Secretary of State may give directions to the Corporation requiring them, on or before a specified date or at specified intervals, to make a report to him on, or on any specified matters relating to, the operation of this Act during any specified period or periods.
- (2) Directions given under this section may—
 - (a) specify the matters to be dealt with, and any particular information to be given, in any such report and the form in which any such report is to be made; and
 - (b) require the Corporation to publish any such report in any specified manner.
- (3) The Secretary of State shall lay before Parliament a copy of every report received by him under this section.
- (4) In consequence of the preceding provisions, it shall not be necessary for any annual report made under section 54 of the Coal Industry Nationalisation Act 1946 after the commencement of this section to include any report on the operation of this Act.

*General***50 Regulations and orders**

- (1) Any power of the Secretary of State or the Ministers to make regulations or orders under this Act shall be exercisable by statutory instrument and shall include power—
 - (a) to make different provision for different cases or classes of case; and
 - (b) to make such supplementary, incidental, consequential or transitional provisions as the Secretary of State or the Ministers consider necessary or expedient.

- (2) A statutory instrument containing any regulations or order under this Act (other than an order under section 54(2) below) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) In this section “the Ministers” means the Secretary of State and the Minister of Agriculture, Fisheries and Food acting jointly.

51 Service of documents

- (1) Except as otherwise provided by regulations made by the Secretary of State, any notice, request, claim or other document required or authorised by this Act to be given, made or sent to the Corporation may be served on the Corporation by leaving it at, or by sending it by post to, any office of the Corporation.
- (2) Except as otherwise provided by regulations made by the Secretary of State, any notice, request or other document required or authorised by this Act to be given, made or sent to any person other than the Corporation may be served on that person—
 - (a) by delivering it to him;
 - (b) by leaving it at his proper address; or
 - (c) by sending it to him by post at that address.
- (3) For the purposes of subsection (2) above and section 7 of the Interpretation Act 1978 (service of documents) in its application to that section, the proper address of any person is—
 - (a) his last known address; or
 - (b) in the case of a body corporate, the address of its registered or principal office.

52 Interpretation etc

- (1) In this Act, unless the context otherwise requires—
 - “agriculture”, “agricultural” and “agricultural land”—
 - (a) in relation to England and Wales, have the meanings given by section 109 of the Agriculture Act 1947;
 - (b) in relation to Scotland, have the meanings given by section 86 of the Agriculture (Scotland) Act 1948;
 - “agricultural unit”—
 - (a) in relation to England and Wales, has the meaning given by section 171(1) of the Town and Country Planning Act 1990;
 - (b) in relation to Scotland, has the meaning given by section 196(1) of the Town and Country Planning (Scotland) Act 1972;
 - “claim” means a claim in writing;
 - “the claimant” and “any other person interested” have the meanings given by section 3(6) above;
 - “coal” has the same meaning as in Part I of the Coal Act 1938;
 - “the Corporation” means the British Coal Corporation;
 - “damage notice” has the meaning given by section 3(2) above;
 - “depreciation payments” has the meaning given by section 2(5)(b) above;
 - “dwelling-house”—
 - (a) in relation to England and Wales, means any building or part of a building used wholly or partly as a private dwelling, together with

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any yard, garden, outhouses and appurtenances belonging to or usually enjoyed with that building or part;

- (b) in relation to Scotland, means a house including any part of a building, being a part which is occupied or intended to be occupied as a separate dwelling, and including, in particular, any flat, together with any yard, garden, outhouses and pertinents belonging to and usually enjoyed with the house;

“emergency works” has the meaning given by section 12(1) above;

“ground lease” means a lease for building purposes at a rent (or, where the rent varies, at a maximum rent) which does not substantially exceed the rent which a tenant might reasonably have been expected, at the date when the lease was granted, to pay for the land comprised in the lease, excluding any buildings, for a term equal to the term created by the lease;

“housing clearance powers” means Part IX of the Housing Act 1985 (slum clearance) or Part VI of the Housing (Scotland) Act 1987 (closing and demolition orders);

“the Lands Tribunal”, in relation to Scotland, means the Lands Tribunal for Scotland;

“notice” means notice in writing and “notify” shall be construed accordingly;

“notice of proposed remedial action” has the meaning given by section 4(4) above;

“owner”—

- (a) in relation to any real property in England and Wales, means the lessee under the ground lease if it is held on such a lease, and the owner of the fee simple if it is not;
- (b) in the case of any heritable property in Scotland, means the proprietor of the *dominium utile* if the property is feudal property, and the owner of the property if it is not;

“payments in lieu” has the meaning given by section 2(5)(a) above;

“prescribed” means prescribed by regulations made by the Secretary of State;

“remedial obligation” has the meaning given by section 2(3) above;

“remedial works” has the meaning given by subsection (2) of section 6 above (subject to subsection (7) of that section);

“request” means a request in writing;

“schedule of remedial works” has the meaning given by section 6(8) above;

“statutory undertakers” means—

- (a) any persons authorised by any enactment to carry on any railway, light railway, tramway, road transport, water transport, canal, inland navigation, dock, harbour, pier or lighthouse undertaking or any undertaking for the supply of hydraulic power; and
- (b) any of the following, namely, any licence holder within the meaning of the Electricity Act 1989, any public gas supplier, any water or sewerage undertaker, the National Rivers Authority, any public telecommunications operator, the Post Office, the Civil Aviation Authority and any relevant airport operator within the meaning of Part V of the Airports Act 1986;

“stop notice” has the meaning given by section 16(4) above;

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“structure” includes any works providing passage or hard standing for persons, animals or vehicles (including railway or tramway vehicles and aircraft);

“subsidence damage” has the meaning given by section 1 above;

“works” includes sewers, drains, pipes, cables, wires and any other apparatus.

- (2) References in this Act, in relation to any damage, to a notice affecting the required remedial action in respect of the damage are references to—
 - (a) any notice of proposed remedial action with respect to that damage; and
 - (b) any notice with respect to a decision by the Corporation to make or revoke an election to take in respect of that damage any remedial action other than that indicated in any such notice as is mentioned in paragraph (a) above.
- (3) References in this Act, in relation to any interest payable by the Corporation, to the applicable rate are references to such rate as may from time to time be prescribed by order made by the Secretary of State; and an order under this subsection—
 - (a) may apply different rates in relation to different periods;
 - (b) may include provision for a nil rate to apply in relation to any period; and
 - (c) may fix any rate by specifying it or by applying any rate for the time being applicable for any other purpose (whether statutory or otherwise).

53 Transitional provisions, savings and repeals

- (1) The transitional provisions and savings contained in Schedule 7 to this Act shall have effect; but nothing in this subsection shall be taken as prejudicing the operation of sections 16 and 17 of the Interpretation Act 1978 (which relate to the effect of repeals).
- (2) The enactments mentioned in Schedule 8 to this Act are hereby repealed to the extent specified in the third column of that Schedule.

54 Short title, commencement and extent

- (1) This Act may be cited as the Coal Mining Subsidence Act 1991.
- (2) This Act shall come into force on such day as the Secretary of State may by order appoint, and different days may be appointed for different provisions or for different purposes.
- (3) Without prejudice to the provisions of Schedule 7 to this Act, an order under subsection (2) above may make such transitional provisions and savings as appear to the Secretary of State necessary or expedient in connection with any provision brought into force by the order.
- (4) This Act does not extend to Northern Ireland.