



Mineral Development Act (Northern Ireland) 1969

1969 CHAPTER 35

DAMAGE CAUSED BY MINING OPERATIONS

38 Compensation for damage caused in working minerals, etc.

- (1) Subject to the succeeding provisions of this section, where damage is caused, directly or indirectly, either—
- (a) by working, or doing anything incidental to the working of, mines and minerals vested in the Ministry, or
 - (b) by exercising a right of entry or user of land conferred by or under this Act or the Act of 1959,

the person suffering the damage shall be entitled to recover compensation for the damage from the person causing the damage.

- (2)^{F1} Any question arising as to—
- (a) the entitlement of any person to compensation under this section, or
 - (b) the amount payable by way of that compensation,
- shall, in default of agreement, be referred to and determined by the Lands Tribunal.
- (3)^{F1} Compensation under this section in respect of damage to land shall not be payable to any person from whom any land has, or ancillary rights over any land have, been acquired by the Ministry under this Act and to whom any compensation is payable under^{F2} Article 8(1) to (3) of the Land Compensation (Northern Ireland) Order 1982] by the Ministry in respect of injurious affection of the first-mentioned land.
- (4)^{F1} In assessing compensation under this section in respect of damage to land regard shall be had to any benefit which the person entitled to the compensation may derive from any works which have been or are to be carried out, or any use of land, by the person causing the damage.

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- (5)^{F1} In assessing compensation under this section in respect of damage to land regard shall also be had to any undertaking given by the person causing the damage to make alterations or additions to any works, or to construct additional works, or to vary or abandon any use of land, or to abandon part of any land acquired or any ancillary rights, or to grant other lands or easements.
- (6)^{F1} Where for the purpose of assessing the amount of any compensation payable under this section the value of any land is required to be determined, that value shall be determined in accordance with rules (2) to (4) of^{F2} Article 6(1) of the Land Compensation (Northern Ireland) Order 1982].
- (7)^{F3} Where the amount of compensation which is payable under this section has been determined but for some reason it is not possible for the person who is liable to make the payment to obtain a good discharge therefor, that person may, or, if the Lands Tribunal so directs, shall, pay that amount—
- (a) if it does not exceed [^{F4}£45,000], into the county court; or
 - (b) if it exceeds [^{F5}£45,000], into the High Court.
- (8)^{F3} Money paid into the county court or, as the case may be, the High Court under subsection (7) shall, subject to county court rules or rules of court, be dealt with according to the orders of the court.
- (9)^{F3} This section shall have effect to the exclusion of^{F2} Article 18 of the Land Compensation (Northern Ireland) Order 1982].

F1	1972 c.9 (NI); 1973 NI 2
F2	1982 NI 9
F3	1972 c.9 (NI)
F4	S.R. 1992/372
F5	S.R. 1993/282

39 Power of Lands Tribunal to prohibit, restrict or terminate certain operations.

- (1) Where, on application made by the owner or occupier of any land, the Lands Tribunal is satisfied—
- (a) that operations by the Ministry under section 11, 15 or 25 or by a licensee under a prospecting licence or a grantee under a mining lease, mining licence, mining permission or mining facilities permit are being, or that the applicant has reasonable cause to believe that they will be, carried out in such a manner as, if continued, to cause damage to any dwelling-house on the land or to render any such dwelling-house incapable of being beneficially occupied or to make the land incapable of being beneficially occupied or productively used, and
 - (b) that the applicant is not bound by the terms of any agreement or order authorising the carrying out of the operations,
- the Tribunal may make an award prohibiting, restricting or terminating operations on the land by the Ministry or, as the case may be, the licensee or grantee until any, or any combination, of the following things is done, that is to say,—
- (i) satisfactory arrangements are made for the payment of compensation under section 38 for any damage which may be, or has already been, caused;
 - (ii) adequate security for the payment of such compensation is given;

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- (iii) an agreement is arrived at or, if the circumstances are such that a mining facilities order can be made, such an order is made for the acquisition of the dwelling-house or the land or, as the case may require, of appropriate ancillary rights in respect of the land;
 - (iv) an undertaking such as is mentioned in section 38(5) is given by the Ministry or, as the case may require, the licensee or grantee.
- (2) Where, on application made by the owner or occupier of any land, the Lands Tribunal is satisfied that the applicant has reasonable cause to believe that a licensee under a prospecting licence or a grantee under a mining lease, mining licence, mining permission or mining facilities permit is carrying out or is about to carry out operations on the land in contravention of any of the provisions of this Act or of any conditions of the licence, lease, permission or permit, the Tribunal may, upon such terms (including terms as to the payment of compensation under section 38 for damage which has already been caused or the giving of security therefor) as it thinks proper, make an award prohibiting, restricting or terminating such operations on the land.
- (3) For the purposes of paragraph (b) of subsection (1) an owner or occupier of land shall be deemed to be bound by the terms of an agreement or order authorising the carrying out of operations such as are mentioned in paragraph (a) of that subsection, if those operations constitute an exercise of powers in connection with which compensation is payable under^[F6] Article 8(1) to (3) of the Land Compensation (Northern Ireland) Order 1982] in respect of injurious affection of the land.
- (4) In this section any reference to a prospecting licence or a mining lease includes a reference to such a licence or, as the case may require, such a lease granted under the Act of 1959.

F6 1982 NI 9

40 Restrictions on working minerals required for support.

- (1) Where, on application made by a person having an estate in any land who is not entitled to support or sufficient support (whether vertical or lateral) for any buildings or works erected or constructed, or intended to be erected or constructed on or below the surface, the Lands Tribunal is satisfied that it is not reasonably practicable to obtain a right to such support by private arrangement, the Tribunal may, upon such terms as it thinks proper, make an award imposing such prohibitions or restrictions on the working of minerals in that land and the land adjacent thereto as it considers necessary to secure sufficient support to the buildings or works.
- (2) The restrictions may be either on the quantity or position of the minerals to be worked, or on the methods of working or packing, or otherwise such as may be necessary to secure adequate support to the buildings or works or to prevent or minimise damage thereto.
- (3) In considering what restrictions, if any, should be imposed under this section regard shall be had to the value of the buildings or works or the cost of repairing damage likely to be caused thereto by subsidence, as compared with the value of the minerals, or to the importance of the erection or construction or the preservation of the buildings or works as compared with the importance, in the public interest, of the working of the minerals.

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- (4) The terms which may be imposed by an award under this section include terms as to the payment of compensation by the applicant or the giving of security therefor.
- (5) For the purposes of this section, where any building or work is a national monument to which section 25 of the Irish Church Act 1869 applies or [^{F7} a scheduled monument within the meaning of the Historic Monuments Act (Northern Ireland) 1971 or is a historic monument which is the subject of a protection order under the said Act of 1971 or is owned by or vested in, or is in the guardianship of,] the Ministry of Finance^{F8} or of a local authority, the Ministry of Finance^{F8} or the local authority, as the case may be, shall be deemed to be a person entitled to make an application under this section.
- (6) This section shall not prejudicially affect any right under the Railways Clauses Consolidation Act 1845 ...^{F9} (including that Act as applied, with or without modifications, by any other transferred provision) or any other transferred provision (including such a provision in a local or private Act) of any railway company, local authority or public body to prohibit, restrict or regulate the working of minerals for the preservation of support, nor shall it confer on any such company, authority or body, except as provided in subsection (5), a right to apply under this section for any prohibition or restriction on the working of minerals.

F7 1971 c.17 (NI)

F8 Functions transf., SR 1976/80

F9 1973 NI 2

Modifications etc. (not altering text)

C1 S. 40 modified (1.4.2007) by [Water and Sewerage Services \(Northern Ireland\) Order 2006 \(S.I. 2006/3336 \(N.I. 21\)\)](#), arts. 1(2), 308(1), **Sch. 12 para. 8(1)** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (with transitional, transitory and saving provisions in art. 3, Sch. 2)

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