



Coal Mining Subsidence Act 1991

1991 CHAPTER 45

PART V

SUPPLEMENTAL

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 [^{F1}appropriate 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.

Textual Amendments

- F1** Words in s. 40(1) substituted (1.6.2009) by [The Transfer of Tribunal Functions \(Lands Tribunal and Miscellaneous Amendments\) Order 2009 \(S.I. 2009/1307\)](#), art. 1, [Sch. 1 para. 218](#) (with Sch. 5)

Changes to legislation: Coal Mining Subsidence Act 1991, Cross Heading: Disputes and complaints is up to date with all changes known to be in force on or before 01 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

Modifications etc. (not altering text)

- C1 S. 40 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**
- C2 S. 40 extended (31.10.1994) by 1994 c. 21, s. 47(1) (with ss. 40(7), 66); S.I. 1994/2552, art. 2, **Sch. 1**
- C3 S. 40(2)(3) applied (31.10.1994) by 1994 c. 21, s. 47(3) (with ss. 40(7), 66); S.I. 1994/2552, art. 2, **Sch. 1**

Commencement Information

- I1 S. 40 wholly in force at 30. 11. 1991 see s. 54(2) and S.I. 1991/2508, **art. 2**

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.

Modifications etc. (not altering text)

- C4 S. 41 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. 41 wholly in force at 30. 11. 1991 see s. 54(2) and S.I. 1991/2508, **art. 2**

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.

Changes to legislation: Coal Mining Subsidence Act 1991, Cross Heading: Disputes and complaints is up to date with all changes known to be in force on or before 01 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

Modifications etc. (not altering text)

C5 S. 42 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

I3 S. 42 wholly in force at 30. 11. 1991 see s. 54(2) and S.I. 1991/2508, **art. 2**

^{F2}**43**

Textual Amendments

F2 S. 43 repealed (31.10.1994) by 1994 c. 21, s. 67(8), **Sch. 11 Pt. II** (with ss. 40(7), 66); S.I. 1994/2553, **art. 2**

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.

Modifications etc. (not altering text)

C6 S. 44(1) 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

I4 S. 44 wholly in force at 30. 11. 1991 see s. 54(2) and S.I. 1991/2508, **art. 2**.

^{F3}**45**

Changes to legislation: Coal Mining Subsidence Act 1991, Cross Heading: Disputes and complaints is up to date with all changes known to be in force on or before 01 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) [View outstanding changes](#)

Textual Amendments

- F3** S. 45 repealed (31.10.1994) by 1994 c. 21, s. 67(8), **Sch. 11 Pt. II** (with ss. 40(7), 66); S.I. 1994/2553, **art. 2**

Changes to legislation:

Coal Mining Subsidence Act 1991, Cross Heading: Disputes and complaints is up to date with all changes known to be in force on or before 01 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

[View outstanding changes](#)

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 19(1A) inserted by [2023 asc 3 Sch. 13 para. 162](#)