



Coal industry Act 1994

1994 CHAPTER 21

PART III

RIGHTS AND OBLIGATIONS IN CONNECTION WITH COAL MINING

Subsidence

42 Subsidence damage to which 1991 Act applies

- (1) Section 1 of the 1991 Act (preliminary) shall have effect so far as it relates to operations carried on at any time on or after the restructuring date with the substitution for subsection (3) (meaning of “lawful coal-mining operations”) of the following subsection, that is to say—

“(3) In subsection (1) above “lawful coal-mining operations” means any coal-mining operations to which section 25 of the Coal Industry Act 1994 applies (including operations carried on in contravention of subsection (1) of that section and those that are actionable apart from this Act) which—

- (a) are carried on by a person who is for the time being a licensed operator within the meaning of that Act; or
- (b) are carried on by a person who has been such a licensed operator and in continuation of operations begun by that person before he ceased to be such an operator;

but for the purposes of this subsection any operations carried on or begun by any person as a person who is for the time being authorised to carry on coal-mining operations on behalf of a person who is or has been a licensed operator shall be treated as carried on or begun by the latter person, whether or not the authorisation extends to the operations in question.”

- (2) Sections 34 and 35 of the 1991 Act (which make provision with respect to the construction of any building, structure or works on land from which the Corporation is entitled to withdraw support) shall cease to have effect on the restructuring date.

43 Persons responsible for subsidence

- (1) Except where Schedule 6 to this Act otherwise provides, the 1991 Act and the regulations under that Act which are in force immediately before the restructuring date shall have effect on and after that date with the substitution, in relation to any subsidence damage, for references to the Corporation of references to the person who is the responsible person in relation to that damage.
- (2) Subject to the following provisions of this section and to section 44 below, the responsible person, in relation to any subsidence damage, shall for the purposes of this Part be—
 - (a) the person with responsibility for subsidence affecting the land which has been damaged or, as the case may be, the damaged part of it; or
 - (b) in the case of damage to other property, the person with responsibility for subsidence affecting the land where that property or, as the case may be, the damaged part of it was situated at the time of the damage.
- (3) For the purposes of this Part, the person with responsibility for subsidence affecting any land shall be—
 - (a) where that land is for the time being within the area of responsibility of any person as the holder of a licence under Part II of this Act, that person; and
 - (b) in any other case, the Authority.
- (4) For the purposes of this Part a person is the responsible person in relation to any subsidence damage whether that damage was caused or occurred before or after the time when that person became the person with responsibility for subsidence affecting the land in question.
- (5) Accordingly, but subject to section 44 below, where, by virtue of any designation or of any transfer of rights and obligations or of the operation of any such provision as is mentioned in section 37(3) above, any person (“the successor”) becomes the person with responsibility for subsidence affecting any land—
 - (a) all the rights and liabilities under the 1991 Act, or under any regulations made under that Act or this Part, of the successor’s predecessor as the person with responsibility for subsidence affecting that land (“the predecessor”) shall be transferred, by virtue only of his becoming the person with responsibility, to the successor; and
 - (b) anything which—
 - (i) has been done under or for any of the purposes of the 1991 Act or those regulations by or in relation to the predecessor, or
 - (ii) is deemed to have been so done,shall be deemed, so far as necessary for that purpose and for the purposes of the continuation by or against the successor of any proceedings under or for the purposes of that Act or those regulations, to have been done by or in relation to the successor.
- (6) It shall be the duty of a person who becomes as mentioned in subsection (5) above the person with responsibility for subsidence affecting any land to take all reasonable steps to secure that the change in the person with that responsibility does not result in any undue delay in the performance of any obligations falling by virtue of that change to be performed by that person.
- (7) Subsections (5) and (6) above shall have effect in relation to the coming into force of subsection (1) above on the restructuring date as they have effect in relation to any

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other transfer of rights and obligations but as if the references to the predecessor were references to the Corporation.

- (8) Schedule 6 to this Act shall have effect for making provision, in addition to or instead of that made by subsection (1) above, for or in connection with the modification of references to the Corporation in the 1991 Act.

44 Cases where there is more than one responsible person

- (1) Where, in the case of any subsidence damage, the area of responsibility of any person as holder of a licence under Part II of this Act includes only part of the damaged land or, as the case may be, of the land where the damaged property was situated, then for the purposes of this Part—
- (a) that person, together with—
 - (i) every other person within whose area of responsibility any part of that land is situated, and
 - (ii) if any part of that land is not situated within the area of responsibility of any person, the Authority,shall be the responsible persons in relation to that damage; and
 - (b) the obligations and liabilities by virtue of section 43 above of the responsible person shall be obligations and liabilities imposed jointly and severally on the persons mentioned in paragraph (a) above.
- (2) Subsection (5) of section 43 above shall have effect as modified by subsection (3) below in any case where—
- (a) a person ceases at any time to be the person with responsibility for subsidence affecting any land but continues, after that time, to be the person with responsibility for subsidence affecting other land; and
 - (b) the effect of subsection (1) above in relation to the circumstances specified in paragraph (a) above is that both the predecessor and the successor are responsible persons in relation to any subsidence damage to which any of the predecessor's rights or liabilities relate.
- (3) In any case where, by virtue of subsection (2) above, this subsection has effect—
- (a) the rights and liabilities of the predecessor, so far as they relate to subsidence damage in relation to which the predecessor continues to be a responsible person, shall continue to be vested in the predecessor, as well as being vested in the successor; and
 - (b) subsection (5) of section 43 above shall not authorise the continuation against the successor of any proceedings under or for the purposes of the 1991 Act which—
 - (i) have been begun, or are deemed to have been begun, against the predecessor; and
 - (ii) may be continued against the predecessor by virtue of paragraph (a) above;but paragraph (b) above shall be without prejudice to any rules of court in accordance with which the successor may be joined as a party to any proceedings in respect of any such rights or liabilities as are mentioned in paragraph (a) above.
- (4) In subsection (1) above the reference to the damaged land and to the damaged property are references, where only part of the land or property has been damaged, to the damaged part of that land or property.

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45 Information to be provided by responsible persons

- (1) The Secretary of State may by regulations make provision imposing requirements on a person with responsibility for subsidence affecting any land—
 - (a) to furnish information, on request, to the owner or occupier of any part of that land;
 - (b) to furnish information to the Authority about any such request for information relating to, or to the possibility of, subsidence damage as is made otherwise than by the owner or occupier of any part of that land;
 - (c) to notify a person who has made a request to which regulations made by virtue of paragraph (b) above apply of its being forwarded to the Authority in pursuance of those regulations; and
 - (d) to ensure that such forms and documents as may be described in the regulations accompany information furnished under the regulations.
- (2) Regulations under this section may contain such provision as the Secretary of State thinks fit with respect to—
 - (a) the descriptions of information to which any request made for the purposes of any such regulations is to be confined; and
 - (b) the particulars to be included in, or omitted from, information furnished in accordance with any such regulations.
- (3) In this section the reference to an owner, in relation to any land, shall be construed in accordance with section 52(1) of the 1991 Act (interpretation); and section 50 of the 1991 Act (regulations and orders) shall apply in relation to the power to make regulations under this section as it applies in relation to any power of the Secretary of State to make regulations under that Act.
- (4) In subsection (5)(c) of section 46 of the 1991 Act and subsection (4)(c) of section 47 of that Act (regulations with respect to information which is to accompany notices), for “which is”, in each case, there shall be substituted “, forms and documents which are”.

46 The subsidence adviser

- (1) The Secretary of State may by regulations make such provision as he considers necessary or expedient—
 - (a) for the appointment of an independent person (“the subsidence adviser”) to carry out, in prescribed cases, the functions specified in subsection (2) below; and
 - (b) for regulating and facilitating the carrying out of those functions by the subsidence adviser.
- (2) The functions referred to in subsection (1) above are—
 - (a) the provision of advice and assistance to persons (other than those with responsibility for subsidence affecting land) in connection with the making of complaints, or the taking of any other steps, in relation to any matter arising under the 1991 Act or any question falling within section 47(1) below;
 - (b) the making to persons with responsibility for subsidence affecting land of recommendations as to the manner in which they conduct themselves where such a matter has arisen or any such question falls to be determined;

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- (c) the making of reports dealing generally with the way in which persons with responsibility for subsidence affecting land conduct themselves where such matters arise or such questions fall to be determined; and
 - (d) the making of reports about the carrying out by the subsidence adviser of his functions, whether in particular cases or generally.
- (3) Without prejudice to the generality of subsection (1) above, regulations under this section may contain provision which, in prescribed cases, requires—
- (a) the publication by the subsidence adviser of his recommendations and reports; and
 - (b) the giving, to persons concerned with any matter being handled by the subsidence adviser, of opportunities for making representations and objections.
- (4) It shall be the duty of the Authority to furnish the subsidence adviser with all such information and assistance as he may reasonably require in respect of any case in which the Authority is the person with responsibility for subsidence affecting the land in question.
- (5) The Secretary of State may by regulations make provision for—
- (a) expenses incurred by the subsidence adviser in the carrying out of his functions, and
 - (b) the expense of making payments to or in respect of him by way of remuneration or otherwise,
- to be met, in whole or in part, by some or all of the persons with responsibility for subsidence affecting land or in such other manner as may be prescribed.
- (6) The provision that may be contained in regulations under this section shall include—
- (a) provision for any matter to which the regulations relate to be determined by the Authority in such manner, and by reference to such factors, as may be described in the regulations; and
 - (b) provision, where any expenses are to be met by the Authority in accordance with the regulations, for amounts in respect of those expenses to be recoverable by the Authority from other persons with responsibility for subsidence affecting land.
- (7) In this section “prescribed” means prescribed by regulations under this section; and section 50 of the 1991 Act (regulations and orders) shall apply in relation to the powers to make regulations under this section as it applies in relation to any power of the Secretary of State to make regulations under that Act.
- (8) The supplementary, incidental and transitional provision that may be contained, by virtue of subsection (7) above, in regulations under this section may include transitional provision in relation to matters arising under the 1991 Act at times before the restructuring date.

47 Disputes etc. as to subsidence matters

- (1) The questions that may be referred to the Lands Tribunal under section 40 of the 1991 Act (disputes generally) shall include—
- (a) any question as to who is the person with responsibility for subsidence affecting particular land;

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- (b) the question whether there has been a contravention of any subsidence requirement; and
 - (c) the question how any such contravention is to be remedied.
- (2) The Secretary of State may by regulations make such provision as he considers appropriate—
 - (a) for establishing procedures that facilitate the making, by agreement or in accordance with regulations made by virtue of paragraph (b) below, of references to such arbitration as may be prescribed of questions arising under the 1991 Act or falling within subsection (1) above;
 - (b) for enabling any such question to be referred to and determined by arbitration in a case where (but for the regulations) it would fall to be referred to the Lands Tribunal on account of a failure by the person whose interest in it derives from the fact or assertion that he is a person with responsibility for subsidence affecting land to agree to the arbitration or to any other method of determining the question; and
 - (c) for regulating the conduct of arbitrations to which questions are referred in accordance with regulations under this subsection.
- (3) Subsections (2) and (3) of section 40 of the 1991 Act (burden of proof and incidental powers) shall apply for the determination of a question falling within subsection (1) above as they apply for the determination of questions arising under the 1991 Act.
- (4) Subject to subsection (5) below, where a question falling within subsection (1) above is referred to the Lands Tribunal or in accordance with any regulations under subsection (2) above to arbitration, the powers of that Tribunal or of the arbitrator or arbiter shall include (in addition to any powers conferred by virtue of subsection (3) above)—
 - (a) power to have such regard as may appear appropriate to any recommendations or report made by virtue of any regulations under section 46 above;
 - (b) power by order to require a person with responsibility for subsidence affecting land to take such steps for remedying any contravention of a subsidence requirement as that Tribunal, arbitrator or arbiter may direct; and
 - (c) power to award compensation of an amount not exceeding #5,000 in respect of any such inconvenience caused to a person by a contravention of a subsidence requirement as does not fall to be compensated for apart from this paragraph.
- (5) In the application of subsection (4)(b) above to an arbitration in so far as relating to subsidence affecting land in Scotland, the words “by order” shall be disregarded and the reference to requiring the person to take remedial steps shall not be construed as prejudicing any other provision of Scots law as respects enforcement of a decree arbitral.
- (6) The Secretary of State may by order substitute a higher amount for the amount for the time being specified in subsection (4)(c) above.
- (7) The Secretary of State may by regulations make provision—
 - (a) for the expenses of maintaining procedures for the purposes of any regulations under subsection (2) above to be met, in whole or in part, by some or all of the persons with responsibility for subsidence affecting land or in such other manner as may be prescribed; and

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- (b) for one or more of the parties to a reference in accordance with any such regulations to be required to pay, or to make a contribution towards, the costs and other expenses incurred in relation to that reference by any person.
- (8) The provision that may be contained in regulations under this section shall include—
- (a) provision for any matter to which the regulations relate to be determined by the Authority in such manner, and by reference to such factors, as may be described in the regulations; and
 - (b) provision, where any expenses are to be met by the Authority in accordance with the regulations, for amounts in respect of those expenses to be recoverable by the Authority from other persons with responsibility for subsidence affecting land.
- (9) References in this section to a contravention of a subsidence requirement are references to any contravention by a person with responsibility for subsidence affecting any land of any of the following requirements, that is to say—
- (a) the requirements imposed on such a person by or under the 1991 Act or by any regulations under section 45 above;
 - (b) the requirement imposed by section 43(6) above;
 - (c) the requirement under paragraph 1 of Schedule 6 to this Act to forward a damage notice to the Authority as soon as reasonably practicable after receiving it; and
 - (d) the requirement to comply with an order made by virtue of subsection (4)(b) above (or, as respects the application of that subsection mentioned in subsection (5) above, a decree granted by virtue of subsection (4)(b)) or section 40(3)(a) of the 1991 Act (orders of the Lands Tribunal).
- (10) In this section—
- “the Lands Tribunal”, in relation to Scotland, means the Lands Tribunal for Scotland; and
 - “prescribed” means prescribed by regulations under this section;
- and section 50 of the 1991 Act (regulations and orders) shall apply in relation to the powers to make regulations under this section, and the power to make orders under subsection (6) above, as it applies in relation to any power of the Secretary of State to make regulations or orders under that Act.
- (11) The transitional provision that may be included, by virtue of subsection (10) above, in regulations under this section may include provision in relation to questions arising in relation to times before the restructuring date.

48 Offences with respect to subsidence information

- (1) A person shall be guilty of an offence under this section if he engages in any conduct falling within subsection (2) below for the purpose of—
- (a) obtaining for himself or any other person any benefit under the 1991 Act; or
 - (b) facilitating the temporary or permanent avoidance, by himself or any other person, of the whole or any part of—
 - (i) any obligation under that Act;
 - (ii) any other requirement mentioned in section 47(9)(a) to (c) above; or
 - (iii) any liability for contravention of any such obligation or requirement.
- (2) A person engages in conduct falling within this subsection if he—

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- (a) furnishes any other person whatever with any information which he knows to be false in a material particular;
 - (b) recklessly furnishes any other person whatever with any information which is false in a material particular; or
 - (c) with intent to deceive, withholds any information from any person whatever.
- (3) A person who is or has been a licensed operator shall be guilty of an offence under this section if he—
 - (a) furnishes the Authority with any subsidence information which he knows to be false in a material particular;
 - (b) recklessly furnishes the Authority with any subsidence information which is false in a material particular; or
 - (c) with intent to deceive, withholds any subsidence information from the Authority.
- (4) In subsection (3) above “subsidence information”, in relation to a person who is or has been a licensed operator, means information relating to the extent of the existing or potential liabilities of that person in respect of subsidence damage.
- (5) Any person who fails to give, in accordance with section 46 or 47 of the 1991 Act (notice to property owners etc. and local authorities), any notice that he is required to give under that section shall be guilty of an offence under this section.
- (6) In any proceedings against a person for an offence by virtue of subsection (5) above it shall be a defence for that person to show that he took such steps as were reasonable to avoid the commission of the offence.
- (7) A person guilty of an offence under this section shall be liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to a fine.