

Coal-Mining (Subsidence) Act, 1957

5 & 6 ELIZ. 2 CH. 59

ARRANGEMENT OF SECTIONS

Section

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CHAPTER 59

An Act to provide for the execution of remedial works and the making of payments in respect of damage caused by subsidence resulting from the working and getting of coal or of coal and other minerals worked therewith; for the execution of works to prevent or reduce such damage; for the carrying out of remedial or preventive measures in connection with land drainage affected or likely to be affected by such damage; and for purposes connected with the matters aforesaid.

[31st July, 1957]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1.—(1) This Act shall apply in relation to any subsidence damage occurring after the passing of this Act; and in this Act the expression "subsidence damage" means any damage (including an alteration of the level or gradient of property not otherwise damaged such as to affect the fitness of that property for use for the purposes mentioned in the next following subsection)—

Duty of
National
Coal Board in
respect of
subsidence
damage.

- (a) to a building or structure or to any of the following works, that is to say, any sewer or drain situated in a building or structure which it serves and any pipes, wires or other fixed apparatus installed in a building or structure for the purpose of providing gas, electricity, water, heating or telephone services for use in that building or structure, and any fixed apparatus (other than pipes or wires) installed outside, but within the curtilage of, a building or structure for the purpose of supplying any such service as aforesaid to that building or structure for use therein; or

- (b) to works of the following descriptions, that is to say, sewers, drains, and any pipes or wires for the supply of gas, electricity, water, heating, telephone or other comparable services, being either works situated outside any building or structure or works in the nature of mains situated in a building or structure in which they neither begin nor end ; or
- (c) to any land, not being damage to that land only as the site of an existing building or structure or of existing works such as are mentioned in the two foregoing paragraphs and being damage such as to affect the fitness of that land for use for the purposes mentioned in the next following subsection,

caused by the withdrawal of support from land in connection with the lawful working and getting of coal, or of coal and other minerals worked therewith, or the lawful getting of any product from coal in the course of working it, not being—

- (i) damage caused in connection with the working and getting of coal and other minerals where the working and getting of the coal was ancillary to the working of those other minerals ; or
- (ii) damage caused in connection with the working and getting of coal or of coal and other minerals by virtue of the grant of a gale in the Forest of Dean or any other part of the Hundred of St. Briavels in the county of Gloucester.

(2) Subject to the provisions of this Act, as soon as reasonably practicable after the occurrence of any subsidence damage the National Coal Board (in this Act referred to as “ the Board ”) shall execute such works (in this Act referred to as “ remedial works ”) as may be necessary to render the damaged property reasonably fit for use for the purposes for which, at the date immediately before the damage occurred, it was or might in all the circumstances reasonably have been expected to be used :

Provided that no works shall be deemed to be necessary as aforesaid over and above such as may be sufficient to render the property not less fit for those purposes than it was at that date.

In this subsection the expression “ works ” includes works of redecoration.

(3) Subject to the provisions of this Act, the Board may, instead of executing remedial works under the last foregoing subsection, elect—

- (a) to make a payment equal to the cost reasonably incurred by any other person in executing remedial works ; or
- (b) in a case where it is proposed to merge the execution of other works in connection with the damaged pro-

perty with the execution of any remedial works or to redevelop, instead of executing remedial works in connection with, the damaged property, to make payments equal to any sums from time to time shown to have been expended by any other person in executing the merged works or, as the case may be, the redevelopment works up to an aggregate amount equal to the expenditure which it is estimated would have been incurred by the Board or by any other person, whichever estimate is the less, in executing remedial works in connection with the damaged property ;

and, without prejudice to the next following subsection, the Board—

- (i) where the damaged property is a highway maintainable or repairable by the inhabitants at large or a highway in Scotland managed and maintained by the Secretary of State or by a county or town council ; or
- (ii) in any case where the execution of remedial works falls within a duty with respect to the damaged property imposed by virtue of any enactment on a government department, local authority or statutory undertakers in connection with the maintenance of public services ; or
- (iii) where it is certified by the Minister, on an application made to him by any other person or of his own motion, that in his opinion it is not in the public interest that the Board should themselves execute the remedial works,

shall make the appropriate election under this subsection, and, in any other case where it is proposed to execute such merged works or redevelopment works as aforesaid or where the remedial works required are of a special character not suitable for execution by the Board, shall not unreasonably refuse any request to make the appropriate election under this subsection received from a person entitled to serve a damage notice in respect of the property :

Provided that the Board shall not be deemed to act unreasonably in refusing any such request received after the Board have begun to execute remedial works .

(4) Subject to the provisions of this Act, if in the case of any property affected by subsidence damage—

- (a) the reasonable cost of executing remedial works would, in the opinion of the Board, exceed the amount of the depreciation in the value of the property caused by the damage ; or
- (b) the property is a dwelling-house and it appears to the Board that a notice to treat for the compulsory

purchase thereof is likely to be served under Part III of the Housing Act, 1936, or Part III of the Housing (Scotland) Act, 1950 (which relate to clearance and redevelopment) in such circumstances that compensation payable for the purchase will fall, but if the subsidence damage had not occurred would not have fallen, to be assessed subject to subsection (2) or (3) of section forty of the said Act of 1936 or, as the case may be, subsection (2) of section thirty-six of the said Act of 1950 (which provide for compensation by reference to site value); or

- (c) the property is a dwelling-house and it appears to the Board that a clearance order under either of the said Parts III is likely to be made in respect thereof in such circumstances that the making of the clearance order will be attributable to the subsidence damage,

the Board may, instead of executing any works or making any payment under the foregoing provisions of this section, elect to make a payment equal to the amount mentioned in paragraph (a) of this subsection; and if in the case of any dwelling-house affected by subsidence damage the Board do not elect to make a payment under this subsection but, before the completion of remedial works or, in a case falling within paragraph (b) of the last foregoing subsection, before all sums in respect of which the Board are liable to make payments have been expended, a notice to treat is served under either of the said Parts III either in respect of the dwelling-house in such circumstances as are mentioned in paragraph (b) of this subsection or in respect of the cleared site of the dwelling-house, or a clearance order is made under either of the said Parts III in such circumstances as are mentioned in paragraph (c) of this subsection, then, notwithstanding and without prejudice to any expenditure or liability of the Board in respect of works already executed, the Board shall make a payment in respect of the dwelling-house equal to the amount mentioned in paragraph (a) of this subsection in like manner as if they had originally elected so to do under paragraph (b) or (c) thereof and shall be absolved from any further obligations in respect of the dwelling-house under the two last foregoing subsections:

Provided that the Board shall not make a payment under paragraph (a), (b) or (c) of this subsection—

- (i) in respect of subsidence damage to any agricultural land or to any building or structure occupied in connection with such land except after consultation with the Minister of Agriculture, Fisheries and Food or, in the case of property situated in Scotland, the Secretary of State; or

(ii) in respect of subsidence damage to a dwelling-house except after consultation with the local authority for the purposes of Part II of the Housing Act, 1936, or, in Scotland, for the purposes of the Housing (Scotland) Act, 1950, in whose area the dwelling-house is situated, and if such a payment is made in respect of a dwelling-house the local authority aforesaid shall not in the exercise of any power to require the repair of that dwelling-house require the execution of any works of repair in respect of that subsidence damage.

(5) Notwithstanding anything in the foregoing provisions of this section, but subject to the provisions of this Act, the Board shall, if works of a temporary nature urgently and reasonably required in order that the damaged property may continue to be used for the purposes for which it was used immediately before the damage occurred or in order to prevent further damage to that property arising from the subsidence damage (in this Act referred to as "emergency works") have been executed by any other person, make a payment equal to the cost reasonably incurred in executing those works.

(6) Where a dwelling-house is affected by subsidence damage, the provisions of the First Schedule to this Act shall have effect.

(7) The provisions of the Second Schedule to this Act shall have effect for the purpose of determining—

- (a) the unit of property to be taken into account for the purposes of subsection (4) of this section as being affected by subsidence damage ;
- (b) the amount of the depreciation in the value of any such unit caused by the damage ; and
- (c) the persons who are to receive any payments made under subsection (3), (4) or (5) of this section.

2.—(1) The Board shall not be required to execute any works or make any payment under subsections (2) to (5) of the foregoing section in respect of subsidence damage to any property unless the owner of the property or some other person who is liable to make good the damage in whole or in part has given notice in writing to the Board of the occurrence of the damage in such manner, within such time, and containing such particulars, as may be prescribed (in this Act referred to as a "damage notice") and has afforded the Board reasonable facilities to inspect the property, so far as he was in a position to afford such facilities.

Notices to be given to or by Board.

(2) As soon after receiving from any person a damage notice or a request to exercise their power of election under subsection (3) of the foregoing section as is reasonably practicable having regard among other things to the provisions of sections six, nine and ten of this Act, the Board shall consider whether

or not to exercise their powers of election under the said subsection (3) or under subsection (4) of the foregoing section and give notice in writing of their decision to the person aforesaid; and, without prejudice to subsection (3) of the next following section, where the Board have given notice that they elect to make a payment under one or the other of those subsections they shall not revoke that election except with the agreement of all persons to whom they have given notice thereof or who have served on the Board a notice under the next following subsection:

Provided that if the Board serve a notice under subsection (2) of the next following section in respect of any works in connection with the damaged property, the Board shall not be required to serve a notice under this subsection in respect of those works until the notice under the said subsection (2) ceases to be in force in respect thereof.

(3) The Board shall not be required to make any payment under subsection (3) of the foregoing section in respect of any works executed by any other person in connection with any property unless that person has given notice in writing to the Board, in the prescribed manner and, except in such circumstances as may be prescribed, at the prescribed interval before the works are begun, containing adequate particulars thereof, and has afforded the Board reasonable facilities to inspect the property, so far as he was in a position to afford such facilities.

(4) The Board shall not be required to make any payment under subsection (5) of the foregoing section in respect of any emergency works executed by any other person in connection with any property—

- (a) unless that person has given to the Board in writing as soon as was reasonably practicable in all the circumstances notice and adequate particulars of those works, and has afforded the Board reasonable facilities to inspect the property, so far as he was in a position to afford such facilities; or
- (b) if the emergency works are executed after the Board have given notice under subsection (2) of this section that they elect to make a payment in respect of the damaged property under subsection (4) of the foregoing section.

(5) Where the Board have given notice under subsection (2) of this section to the person by whom a damage notice was served that they propose to execute remedial works under subsection (2) of the foregoing section, the Board, if so requested by that person at any time before these works are completed, shall give to that person in writing adequate information with respect to any of those works still remaining to be executed.

3.—(1) The next following subsection shall apply in any case where a damage notice has been served on the Board in respect of any property and it appears to the Board to be probable that further subsidence damage will occur to that property within such a period as would make it unreasonable that all or any of the permanent works which would otherwise fall to be executed in connection therewith should be executed for the time being.

Cases where further damage is likely or occurs.

(2) In any case to which this subsection applies, the Board may serve on any person to whom, by virtue of any of the foregoing provisions of this Act, they have an obligation in respect of the damage to which the damage notice in question relates notice in writing to the effect that, except for emergency works and except for such other works, if any, as may be specified in the notice, the Board will neither execute any works while the notice remains in force nor make any payment in respect of works executed while the notice remains in force; and, except in such circumstances as may be prescribed, the obligations of the Board to that person by virtue of the foregoing provisions of this Act shall be subject to the terms of that notice:

Provided that it shall be the duty of the Board to revoke any notice given by them under this subsection as soon as works in connection with the property in addition to emergency works and those works, if any, specified in the notice can reasonably be executed, and any person aggrieved by a failure of the Board to specify any works in or to revoke such a notice may apply to the county court or, where the property is situated in Scotland, to the sheriff, and the court or, as the case may be, the sheriff may, if it appears in all the circumstances to be reasonable so to do, order that the notice shall be deemed to specify such additional works as may be specified in the order or, as the case may be, shall cease to have effect, and that order shall come into force when the period for an appeal therefrom expires or, if such an appeal is made, on the date when that appeal is dismissed or abandoned.

(3) Where in the case of any property a damage notice has been served on the Board and before remedial works or any works undertaken in pursuance of an election under paragraph (b) of subsection (3) of section one of this Act have been completed or the aggregate of any sums expended in executing any works undertaken as aforesaid has reached the aggregate amount referred to in that paragraph, and without the Board having given notice under subsection (2) of the last foregoing section that they elect to make a payment under subsection (4) of section one of this Act, further subsidence damage occurs to that property, the damage referred to in the damage notice and that further damage shall be treated as one, and accordingly—

(a) references in this Act to the time immediately before or immediately after the occurrence of the damage

shall be construed as references to the time immediately before the occurrence of the damage referred to in the damage notice or immediately after the occurrence of the further damage, as the case may be ;

- (b) any notice under the said subsection (2) served before the occurrence of the further damage shall cease to have effect, the foregoing provisions of this Act shall apply as if that notice had not been given, and the reference to remedial works in the proviso to the said subsection (3) shall not include any remedial works begun before the occurrence of the further damage ; and
- (c) a fresh damage notice shall only be required if, before the occurrence of the further damage, notice had been served under the said subsection (2) of an election under the said subsection (3) :

Provided that the Board shall be under the like liability, if any, with respect to the cost of any works executed before the occurrence of the further damage as if that further damage had not occurred.

Powers of Board with respect to preventive works.

4.—(1) Where it appears to the Board that subsidence damage is likely to occur to any building or structure or to any such works as are mentioned in paragraph (a) or (b) of subsection (1) of section one of this Act, being a building, structure or works for the time being in existence, and that the execution of certain works (in this section referred to as “preventive works”) on that property, or on that property and some other property which would benefit from those preventive works, would prevent the occurrence or reduce the extent of such damage, they may—

- (a) with the consent of all persons who are owners of any property on which the preventive works would fall to be executed or who would be liable to make good in whole or in part subsidence damage to any of that property, execute the preventive works ; or
- (b) upon undertaking to pay any cost reasonably incurred in the execution of the preventive works, require their execution by the owner of the property on which they would fall to be executed or any other person who would be liable as aforesaid in respect thereof.

(2) If in the case of any property any person unreasonably withholds his consent to the execution of preventive works thereon by the Board under this section or unreasonably fails to comply with any requirement to execute such works made by the Board under this section, and subsidence damage subsequently occurs to the property, then—

- (a) if the damage could have been prevented by the execution of the preventive works, the Board shall not be

required to execute any works or make any payment under subsections (2) to (5) of section one of this Act in respect of that damage ;

- (b) if the extent of the damage could have been reduced by the execution of the preventive works, the Board shall not be liable under the said subsections (2) to (5) to execute, or make any payment in respect of the execution of, any works which would not have been required if the preventive works had been executed ;
- (c) if the property is a dwelling-house, the person aforesaid shall not be entitled to serve a notice in respect thereof under paragraph 4 of the First Schedule to this Act nor to receive any relief under that Schedule :

Provided that—

- (i) where different consents are required in respect of different parts of any property, those different parts shall be treated as different properties for the purposes of this subsection ;
- (ii) paragraphs (a) and (b) of this subsection shall not apply in the case of a failure to comply with a requirement under this section if the failure is the result of an express refusal to comply or permit compliance by one or more, but not both or all, of two or more persons whose compliance or permission is necessary ;
- (iii) the withholding by any person of consent to the execution of preventive works on any property by the Board shall not be deemed to be unreasonable in a case which, if those works were remedial works consequent upon subsidence damage to that property, would fall within paragraph (i), (ii) or (iii) of subsection (3) of section one of this Act.

(3) Where in the case of any property the consent of two or more persons is required for the execution of preventive works by the Board under this section and such consent has been withheld by one or more, but not both or all, of those persons, then, if it appears to a county court or, where the property is situated in Scotland, to the sheriff, on an application made by any of those persons or by the Board, that any of those consents has been withheld unreasonably, the court or the sheriff may order that this section shall have effect as if that consent had been given.

5.—(1) Subject to the two next following subsections, the Board shall, in any area in England and Wales outside the Doncaster Drainage Area within the meaning of the Doncaster Area Drainage Act, 1929, from time to time carry out such, if any, measures (in this section referred to as “remedial measures”) for remedying, mitigating or preventing any

Special provisions with respect to damage affecting land drainage.

deterioration in any land drainage system by reason of subsidence damage which has occurred or appears likely to occur, being a drainage system maintainable by a drainage authority, as may be agreed between the Board and the appropriate drainage authority, or, in default of such agreement, as may be determined in the manner provided by regulations under subsection (5) of this section, to be in all the circumstances reasonably required and not unjustifiable on economic grounds, and any such remedial measures shall be carried out in accordance with such arrangements as to the timing thereof as may be agreed or determined as aforesaid.

(2) Without prejudice to the next following subsection, the Board may elect, in respect of all or any of the remedial measures aforesaid, not to carry out those measures themselves but—

- (a) to make to the appropriate drainage authority a payment equal to the cost reasonably incurred by that authority in carrying out those measures; or
- (b) if that authority propose to merge the carrying out of those measures with the execution of other works, to make to the authority payments equal to any sums from time to time shown to have been expended by the authority in carrying out the merged operations up to such aggregate amount as may be agreed or determined as aforesaid to be reasonable in all the circumstances having regard to the expenditure which would have been incurred respectively by the Board or by the authority in carrying out the remedial measures;

and the Board, in a case where the remedial measures fall to be carried out in connection with property comprised in a main river for the purposes of Part II of the Land Drainage Act, 1930, shall make the appropriate election under this subsection and in any other case shall not unreasonably refuse any request to make the appropriate election under this subsection received from the appropriate drainage authority:

Provided that the Board shall not be deemed to act unreasonably in refusing any such request received after the Board have begun to carry out the remedial measures.

(3) Notwithstanding anything in the two last foregoing subsections, in any case where it is agreed or determined as aforesaid to be appropriate, the liability of the Board for the cost of any recurring remedial measures may be discharged by a lump sum payment agreed or determined as aforesaid to represent the capital amount of that cost.

(4) Subsection (2) of section three of this Act shall apply in any case where a damage notice has been served on the Board

in respect of any property and the Board are of opinion with respect to all or any of the permanent works which would otherwise fall to be executed in connection with the property that the necessity for, or the nature or manner of execution of, those works is likely to be so affected by operations under this section or under Part II of the Doncaster Area Drainage Act, 1929, as to make it unreasonable that those works should be executed for the time being.

(5) Regulations made by the Minister and the Minister of Agriculture, Fisheries and Food, acting jointly—

- (a) shall make provision with respect to the procedure to be followed by the Board and by the appropriate drainage authority in giving effect to the provisions of this section and for the determination of questions arising under this section between the Board and the appropriate drainage authority ; and
- (b) may contain such incidental and supplementary provisions as the Ministers aforesaid may consider expedient.

(6) The Board shall, for the purpose of carrying out any remedial measures under this section, have the like powers of surveying and entering on any land and of doing anything thereon as are conferred on the appropriate drainage authority by the enactments relating to land drainage :

Provided that this subsection shall not apply in relation to any land occupied by or on behalf of the Crown.

(7) In this section, the expression “ the appropriate drainage authority ” means, in a case where the remedial measures would fall to be carried out either in connection with a main river for the purposes of Part II of the Land Drainage Act, 1930, or outside any internal drainage district as defined by that Act, the river board, or in any other case the internal drainage board as defined as aforesaid, in whose area the remedial works would fall to be carried out.

6.—(1) A person entitled to serve a damage notice 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—

Avoidance
of double
remedies.

- (a) a claim against the Board by virtue of subsections (2) to (5) of section one of this Act ; and
- (b) a claim against the Board or a licensee of the Board for damages or compensation under a liability arising apart from this Act,

but subject to the next following subsection may elect which of those claims he will proceed with for the time being.

(2) Where any person proceeds with a claim such as is mentioned in paragraph (a) or, as the case may be, paragraph (b) of the foregoing subsection, then unless—

(a) it is determined, whether by agreement or otherwise, that he is entitled to none of the relief claimed ; or

(b) the claim is withdrawn before it is determined,

he shall not be entitled to proceed thereafter with a claim such as is mentioned in the other of the said paragraphs of that subsection.

(3) Regulations for the purposes of subsection (1) of section two of this Act shall secure that where any person proceeds with a claim such as is mentioned in paragraph (b) of subsection (1) of this section and that claim was made before the expiration of the time otherwise prescribed for the service of a damage notice in respect of the same damage, the time within which a damage notice must be served by that person in respect of that damage shall not commence to run until that claim is either determined or withdrawn before determination.

(4) In the case of any local authority or statutory undertakers, the provisions of this Act and of any other enactment making provision with respect to rights and liabilities between the Board and the authority or undertakers in respect of the working of minerals under or adjacent to, or 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 entered into between the Board and the authority or undertakers and for the time being subsisting :

Provided that this subsection shall not apply to an agreement made in connection with a disposition of an interest in land or to such an agreement as is mentioned in paragraph (a) of subsection (2) of the next following section made solely with respect to payments relieving the Board of liability for damage.

Powers of
Board to
recover
expenditure in
certain cases.

7.—(1) Where the Board incur expenditure under section one or section twelve of this Act as a result of subsidence damage caused in connection with the working and getting of coal or of coal and other minerals in accordance with the terms of a licence granted by the Board to some other person, the Board shall be entitled to recover that expenditure as a civil debt from that other person.

(2) Subject to subsection (4) of this section, where the Board incur expenditure under subsections (2) to (5) of section one of this Act in respect of subsidence damage to any property and—

(a) the Board have made payments in respect of the working of coal or of coal and other minerals under an agreement made before the passing of this Act whereby, but for the provisions of this Act, the Board would

by reason of those payments have been relieved of liability for that subsidence damage ; and

- (b) the recipient of any of those payments was on the tenth day of January, nineteen hundred and fifty-seven, or has at any time thereafter before the occurrence of the subsidence damage become, the owner of that property or liable to make good in whole or in part such damage to that property,

the Board shall be entitled, so far as may be necessary to recoup that expenditure, to exercise either or both of the rights specified in the next following subsection ; and where the person to whom the Board have made any payment under the agreement has paid over the whole or part of that payment to any other person by virtue of that other person's being entitled to the beneficial interest therein, any reference in this or the next following subsection to the recipient of payments under the agreement shall be construed in relation to that payment or that part thereof as including a reference to that other person.

- (3) The rights referred to in the last foregoing subsection are—

- (a) to recover as a civil debt from any person who has received any payments made by the Board under the agreement in question in respect of the property in question an amount not exceeding the aggregate of those payments less—

(i) any sums shown by that person to have been expended by him while he was entitled to those payments for the purposes of making good in whole or in part other damage to that property of a kind for which the Board are relieved of liability by the agreement ; and

(ii) any amount by which it is shown by that person that the aggregate of any other sums expended by him for the purposes aforesaid since the making of the agreement exceeds the aggregate of any other payments received by him under the agreement in respect of that property ; and

(iii) any amounts shown by that person to have been borne by him by way of tax which he would not have borne but for periodical payments made by the Board under the agreement ;

- (b) to retain for their own use any further payments falling to be made under the agreement in question in respect of the property in question, unless the person otherwise entitled to those payments shows that the aggregate of the sums expended by him for the purposes aforesaid since the making of the agreement exceeds the aggregate of any payments under the agreement in respect of that property received by him.

(4) So much, if any, of any payment under an agreement such as is mentioned in subsection (2) of this section as may fairly be regarded as paid otherwise than in satisfaction of any liability of the Board for damage shall be disregarded for the purposes of the two last foregoing subsections; and where the Board are entitled to exercise the right specified in paragraph (a) of the last foregoing subsection against two or more persons by virtue of payments in respect of different periods, they shall not exercise that right against any of those persons until they have exhausted it so far as it is exercisable against any other of those persons by virtue of payments in respect of a more recent period.

(5) Where under subsection (1) of this section the Board have recovered any expenditure incurred by them under section one of this Act from a licensee of the Board, then, so far as that expenditure was incurred under subsections (2) to (5) of the said section one, the three last foregoing subsections shall have effect as if that expenditure had been incurred by the licensee and as if for any reference in those three subsections to the Board there were substituted a reference to the licensee:

Provided that the licensee shall not be entitled to recover the amount of any payment made by him before he became a licensee of the Board.

(6) In determining in any case to which subsection (1) or (2) of this section applies the expenditure incurred by the Board under section one of this Act or, as the case may be, subsections (2) to (5) thereof, any amount by which that expenditure exceeds what was necessary or reasonable for the discharge by the Board of their obligations under the said section one or, as the case may be, subsections (2) to (5) thereof shall be left out of account.

Liability of Board for certain damage occurring before passing of Act.

8.—(1) Subject to subsection (6) of this section, this Act shall apply in relation to subsidence damage occurring before the passing of this Act but after the thirty-first day of December, nineteen hundred and fifty-five, to property within the curtilage of a dwelling-house which at the time of the occurrence of the damage was not a dwelling-house to which the Coal-Mining (Subsidence) Act, 1950, applied, being—

- (a) in the case of damage to a building or structure, damage to the dwelling-house or to a building or structure appurtenant thereto;
- (b) in the case of damage to works such as are mentioned in paragraph (b) of subsection (1) of section one of this Act, damage to such works installed for the purposes of the dwelling-house or of a building or structure appurtenant thereto.

(2) In the case of any property damaged by subsidence damage in relation to which this Act applies by virtue of this section, the other provisions of this Act shall have effect subject to the three next following subsections.

(3) Without prejudice to subsection (3) of section three of this Act, all subsidence damage in relation to which this Act applies by virtue of this section shall be treated as one, and accordingly references in this Act to the time immediately before or immediately after the occurrence of the damage shall be construed as references to the time immediately before the first occurrence of any such damage or immediately after the last occurrence of any such damage, as the case may be:

Provided that the Board shall be under the like liability, if any, with respect to the cost of any works executed after the occurrence of any such damage as if no further such damage had occurred.

(4) If remedial works or such merged works or re-development works as are mentioned in subsection (3) of section one of this Act were begun in connection with the damaged property before the passing of this Act—

- (a) the persons entitled to serve a damage notice in respect of the damage shall include any person by whom the whole or any part of the cost of carrying out the works in question was incurred and who at the time of incurring that cost was the owner of the damaged property or liable to make good the damage in whole or in part;
- (b) the Board shall make the appropriate election under subsection (3) or subsection (4) of the said section one;
- (c) any payment under the said subsection (4) shall be made in accordance with paragraph 3 of the Second Schedule to this Act.

(5) Subsection (1) of section seven of this Act shall not apply, and in paragraph (b) of subsection (2) of that section for the reference to the tenth day of January there shall be substituted a reference to the twenty-fifth day of June.

(6) This Act shall not apply in relation to any subsidence damage by virtue of this section—

- (a) if before the passing of this Act the Board made a payment or executed works in full satisfaction of an obligation apart from this Act to make a payment by way of damages or compensation in respect of that damage or to make the damage good;
- (b) in a case where before the passing of this Act the Board made, otherwise than in full satisfaction of such an obligation as aforesaid, any payment in respect of that

damage to a person who, or whose successor in title, would but for this subsection be entitled to serve a damage notice in respect of the damage, unless the amount of that payment is refunded to the Board or brought into account either by that person or by his successor in title:

Provided that this subsection shall not apply to such a payment made under such an agreement as is mentioned in paragraph (a) of subsection (2) of section seven of this Act, being an agreement made before the occurrence of the damage.

Special provisions as to ancient monuments, etc.

9.—(1) This section shall apply in relation to any subsidence damage where the damaged property is—

- (a) specified in the Schedule to the Ancient Monuments Protection Act, 1882, or for the time being specified in a list published under section twelve of the Ancient Monuments Consolidation and Amendment Act, 1913 ; or
- (b) notified to the Board by the Minister of Works as an ancient monument within the meaning of the Ancient Monuments Acts, 1913 to 1953, for the time being under the care of that Minister ; or
- (c) a building notified to the Board by the Minister of Works as being in that Minister's opinion of outstanding historic or architectural interest.

(2) If and so far as, having regard to the nature and extent of the subsidence damage, it is practicable and in the public interest so to restore the damaged property to a condition comparable to its condition at the date immediately before the subsidence damage occurred as to maintain the historic, architectural, archaeological or other special interest attaching thereto at that date, then, for the purposes of remedial works in connection with that property, that property shall not be deemed to be reasonably fit for the purposes mentioned in subsection (2) of section one of this Act unless it has been so restored.

(3) Any dispute arising under the last foregoing subsection as to whether or how far it is practicable or in the public interest to restore any property as mentioned in that subsection shall be determined by the Minister of Works.

Special provisions as to certain tenants.

10.—(1) The provisions of this section shall have effect in any case where property is affected by subsidence damage and—

- (a) a person who is a tenant for the purposes of Part I of the Landlord and Tenant Act, 1927, the Agricultural Holdings Act, 1948, or the Agricultural Holdings (Scotland) Act, 1949, a landholder for the purposes of the Small Landholders (Scotland) Acts, 1886 to 1931,

or a crofter for the purposes of the Crofters (Scotland) Act, 1955, would have been entitled under any enactment contained in those Acts to remove that property or to be paid compensation in respect thereof by his landlord if his tenancy had terminated immediately before the damage occurred; and

- (b) apart from the provisions of this section, neither the person aforesaid nor any other person would be liable to make good the damage in whole or in part;

and in the following provisions of this section the expression "protected tenant" in relation to any property means the person who would have been entitled as aforesaid in respect of that property.

(2) Where the damaged property is property in respect of which the protected tenant would have been entitled to compensation as aforesaid, the protected tenant shall, subject to subsection (5) of this section, be treated for the purposes of this Act either—

- (a) as a person liable to make good the whole of the damage to the property; or
- (b) if by reason of any other enactment contained in the Acts aforesaid compensation in respect of the property would have been payable to him as aforesaid of less than the amount otherwise provided for by subsection (1) of section one of the said Act of 1927, section thirty-seven or section forty-eight of the said Act of 1948, section thirty-eight or subsection (1) of section forty-nine of the said Act of 1949, so much of section ten of the Crofters Holdings (Scotland) Act, 1886, as precedes the proviso thereto, or subsection (4) of section fourteen of the said Act of 1955, as the case may be, as a person liable to meet such part of the cost of making good the whole of the damage to the property as bears to the whole of that cost the same proportion that the compensation which would have been payable bears to the amount otherwise provided for as aforesaid:

Provided that, for the purposes of this section, there shall be deemed to be omitted from the said section ten the words from "and the value" onwards.

(3) Where any of the property consists of a building or structure which the protected tenant would have been entitled to remove as aforesaid, then, without prejudice to any liability of the Board in respect of damage to that building or structure, paragraph (c) of subsection (1) of section one of this Act shall have effect in relation to the site thereof as if that building or structure had not been erected.

(4) Any question arising under this section in relation to any property as to whether or not any person is a protected tenant or as to the amount of any compensation which would have been payable to him as aforesaid under any of the Acts aforesaid shall be determined in like manner as if it had arisen under the Act in question.

(5) Where in the case of any damaged property it is claimed that a person who, apart from the provisions of this section, is neither the owner of, nor liable to make good in whole or in part the damage to, the property falls to be treated as so liable by virtue of this section, and a damage notice is served in respect of the property, whether by that or any other person, that person shall not be treated as liable as aforesaid unless—

(a) either it is agreed between that person and his landlord before the expiration of the period of one month from the first service of a damage notice in respect of the property, or it is determined in proceedings by virtue of the last foregoing subsection begun before the expiration of that period, that that person is a protected tenant in relation to that property ; and

(b) notice in writing of that agreement or of the beginning of those proceedings has been given to the Board before the expiration of the said period ;

and where the liability of the Board to comply with any requirement of this Act in consequence of the service of the damage notice depends on the determination of the question whether or not that person falls to be treated as liable as aforesaid, the Board shall not be required to comply with that requirement until it is established in accordance with the provisions of this subsection whether or not that person falls to be so treated.

(6) For the purposes of the last foregoing subsection, proceedings to determine by arbitration whether or not a person is a protected tenant by virtue of the said Act of 1948 or the said Act of 1949 shall be deemed to be begun when either an arbitrator or, as the case may be, an arbiter has been appointed by agreement between that person and his landlord or an application for the appointment of an arbitrator or, as the case may be, an arbiter has been made to the Minister of Agriculture, Fisheries and Food or, as the case may be, to the Secretary of State by either that person or his landlord.

(7) Subsection (1) of section eight of the Small Landholders (Scotland) Act, 1911, other than the provisos thereto, and subsection (3) of section twenty-three of the said Act of 1955 (which provide that the agreement for a loan by the Secretary of State to a landholder or, as the case may be, crofter shall effect a transfer to the Secretary of State of all rights of the landholder or crofter to compensation for permanent improvements) shall

have effect as if the references therein to such compensation included references to any amount payable to the landholder or crofter by virtue of this section.

11.—(1) Any payment under subsection (4) of section one of this Act in respect of ecclesiastical property which would, apart from the provisions of this subsection, fall to be made to the owner thereof shall be made to the Church Commissioners to be applied for the purposes for which the proceeds of a sale of the property by agreement would be applicable under any enactment or Measure authorising, or disposing of the proceeds of, such a sale. Special provisions with respect to ecclesiastical property, settlements, etc.

(2) In the case of subsidence damage to any ecclesiastical property—

(a) in addition to any other person entitled to serve a damage notice in respect thereof, the Church Commissioners shall be so entitled ;

(b) in addition to any other person upon whom the Board serve a notice in respect of that damage under subsection (2) of section two or subsection (2) of section three of this Act, the Board shall serve any such notice upon the Church Commissioners.

(3) Where any property such as is mentioned in paragraph (a) of subsection (1) of section four of this Act is ecclesiastical property, the Church Commissioners shall be included among the persons whose consent is required under that paragraph.

(4) Where a damage notice is served in respect of ecclesiastical property in respect of which the Church Commissioners, the Ecclesiastical Commissioners or Queen Anne's Bounty have received payments under such an agreement as is mentioned in subsection (2) of section seven of this Act, the Church Commissioners shall be under the like liability, if any, by virtue of that subsection as if they had been the owner of the property at any time while it was ecclesiastical property and as if any of the payments aforesaid received by any of the authorities aforesaid had been received by them ; and the Church Commissioners may apply any money or securities held by them in the payment of any sum recoverable from them under the said section seven by virtue of this subsection.

(5) The four foregoing subsections shall not extend to Scotland, Wales or Monmouthshire, and in those subsections the expression "ecclesiastical property" means property belonging to any ecclesiastical benefice, or being or forming part of a church subject to the jurisdiction of a bishop of any diocese or the site of such a church, or being or forming part of a burial ground subject to such jurisdiction.

(6) Where, in the case of any property to which subsection (1) of this section does not apply, the interest therein of the person to whom the whole or part of a payment under subsection (4) of section one of this Act would, apart from this subsection, fall to be paid is held by that person for religious purposes, then, if so requested by or on behalf of a body of persons notified to the Board by the Minister, after consultation with such persons and organisations as he may think appropriate, as the appropriate representative body, that payment or that part thereof shall be paid to that representative body.

(7) The purposes authorised for the application of capital moneys—

(a) by section seventy-three of the Settled Land Act, 1925, and by that section as applied by section twenty-eight of the Law of Property Act, 1925, in relation to trusts for sale ; and

(b) by section twenty-six of the Universities and College Estates Act, 1925,

and the purposes authorised by section seventy-one of the Settled Land Act, 1925, by that section as applied as aforesaid, and by section thirty-one of the Universities and College Estates Act, 1925, as purposes for which moneys may be raised by mortgage, shall include the payment of any sum recoverable under section seven of this Act.

Payments in respect of death or disablement in certain cases.

12.—(1) If as the result of an injury caused after the passing of this Act by the happening of subsidence damage any person dies or is seriously and permanently disabled, and apart from this section no action to recover damages is maintainable in respect of the death or disablement, then, subject to the next following subsection, the Board shall be liable—

(a) in the case of a death, to pay the like damages, recoverable in the like manner and within the like time, as would have been payable if—

(i) the death had been attributable to the negligence of the Board ; and

(ii) the persons by or on behalf of whom an action could have been brought against the Board for damages in respect of the death if it had been so attributable included any person who at the time of the death was, or but for the injury would have been, wholly or partly maintained by the deceased ; and

(iii) where the death resulted from an injury caused in England or Wales, the damages were claimed under the Fatal Accidents Acts, 1846 to 1908 ;

- (b) in a case of disablement, to pay the like damages, recoverable in the like manner and within the like time, as if the disablement had been attributable to the negligence of the Board.

(2) No liability shall attach to the Board under the foregoing subsection in respect of the death or disablement of any person as a result of an injury if—

- (a) at the time when that person incurred the injury he was a trespasser ; or
 (b) the injury was incurred underground in a mine of coal within the meaning of the Mines and Quarries Act, 1954 ; or
 (c) the injury was wholly attributable to the negligence of that person ;

and if the injury was partly attributable to the negligence of that person the liability of the Board under the foregoing subsection shall be reduced proportionately.

(3) For the purposes of this section a person shall be treated as seriously and permanently disabled if, and only if, he is suffering from loss of physical or mental faculty which is likely to be permanent and is such that the resulting disablement assessed, by reference to the disabilities incurred by that person as a result of that loss of faculty, in such manner as may be prescribed is not less than twenty per cent. ; and any question arising under this section in any particular case shall be determined by a court having jurisdiction to hear and determine proceedings for the recovery of damages in that case.

13.—(1) Save as otherwise provided by or under this Act, any Determination question arising under this Act shall, in default of agreement, be referred— of disputes.

- (a) in England and Wales, in a case where the damaged property in relation to which the question arises constitutes or is comprised in a hereditament for rating purposes of a net annual value not exceeding one hundred pounds, or in any other case where all the parties so agree, to the county court ;
 (b) in any other case in England and Wales, to the Lands Tribunal ;
 (c) in Scotland, to the sheriff.

(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 Board to show that the damage is not subsidence damage.

(3) The tribunal, court or sheriff 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 Board to carry out any obligations imposed upon them by this Act within such period as the tribunal, court or sheriff may direct;
- (b) award damages in respect of any failure of the Board to carry out any such obligations within a reasonable time.

(4) If proceedings are brought under this Act before a county court, the judge of the court may, if he thinks fit, summon an assessor or assessors under subsection (1) of section eighty-eight of the County Courts Act, 1934, notwithstanding that no application is made in that behalf by any party to the proceedings.

(5) In proceedings brought under this Act in Scotland, the court may, if it thinks fit, summon to its assistance at the proof or at any subsequent hearing, whether on appeal or otherwise, a specially qualified assessor or assessors.

(6) Where the court summons an assessor or assessors in any proceedings by virtue of either of the two last foregoing subsections—

- (a) the assessor or assessors may, if so directed by the court, inspect the property to which the proceedings relate on behalf of the court and report to the court in writing thereon; and
- (b) the court may, on consideration of the report and any observations of the parties thereon, give such judgment or make such order in the proceedings as may be just.

(7) The remuneration of an assessor summoned as aforesaid shall be defrayed out of moneys provided by Parliament.

(8) Where in proceedings under this Act in Scotland the sheriff makes a remit by virtue of rule 60 in the First Schedule to the Sheriff Courts (Scotland) Act, 1907, the expense attending the execution of that remit shall, notwithstanding anything contained in that rule, be defrayed out of moneys provided by Parliament.

(9) If the occupier of any premises refuses to afford the Board such facilities as they may require for the purposes of any provision of this Act (other than section five thereof) to enter upon, inspect and execute works on those premises, a magistrates' court, on a complaint made by the Board, or, where the premises are situated 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 order the occupier to permit the exercise of those powers:

Provided that this subsection shall not apply to any premises occupied by or on behalf of the Crown.

14. If any person, for the purpose of obtaining for himself or any other person any benefit under this Act— False information.

(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 one hundred pounds, or to imprisonment for a term not exceeding three months, or to both.

15. Without prejudice to any powers of the Board apart from this section, the Board may make such payments as may be prescribed by way of reimbursement of the expenses incurred by any person for the purpose of securing the carrying out by the Board of their obligations under this Act. Reimbursement of expenses.

16.—(1) Any power to make regulations conferred by any provision of this Act shall be exercisable by statutory instrument, and any such instrument shall be subject to annulment in pursuance of a resolution of either House of Parliament. Regulations.

(2) Regulations prescribing anything required or authorised by this Act to be prescribed may make different provision for different circumstances.

17.—(1) In this Act, unless the context otherwise requires, the following expressions have the following meanings respectively, that is to say— Interpretation etc.

“ agricultural land ” means land used for agriculture within the meaning of the Agriculture Act, 1947, or, in the case of land in Scotland, the Agriculture (Scotland) Act, 1948, which is so used for the purpose of a trade or business;

“ the Board ” means the National Coal Board;

“ damage notice ” has the meaning assigned by subsection (1) of section two of this Act;

“ dwelling-house ” means—

(a) a rating unit used wholly or mainly for the purposes of a private dwelling; or

(b) any such separately occupied part of a rating unit as is used wholly or mainly for the purposes of a private dwelling; or

(c) such part of a rating unit which is used partly, but not wholly or mainly, for the purposes of a private dwelling as is used for those purposes ; or

(d) any such part (whether separately occupied or not) of a rating unit in Scotland entered in the valuation roll as agricultural lands and heritages within the meaning of the Rating and Valuation (Apportionment) Act, 1928, as is occupied wholly or mainly as a private dwelling ;

“ emergency works ” has the meaning assigned by subsection (5) of section one of this Act ;

“ 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 ;

“ the Minister ” means the Minister of Power ;

“ owner ” in relation to any property—

(a) if the property is held on a ground lease, means the lessee under that lease ;

(b) in the case of any other real property in England and Wales, means the owner of the fee simple ;

(c) in the case of any other heritable property in Scotland, means, if the property is feudal property, the proprietor of the dominium utile, or, if the property is not feudal property, the owner of the property ;

“ prescribed ” means prescribed by regulations made by the Minister under this Act ;

“ rating unit ” means—

(a) in England and Wales, a hereditament which is separately valued for rating purposes,

(b) in Scotland, lands and heritages within the meaning of the Lands Valuation (Scotland) Act, 1854, which are separately valued for rating purposes ;

“ remedial works ” has the meaning assigned by subsection (2) of section one of this Act ;

“ 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 assigned by subsection (1) of section one of this Act.

(2) For the purposes of this Act subsidence damage shall be deemed to occur—

(a) in the case of damage such as is specified in paragraph (c) of subsection (1) of section one of this Act or damage consisting in an alteration of the level or gradient of property not otherwise damaged, at the time when the damage first affected the fitness of the damaged property for use for the purposes mentioned in subsection (2) of that section ;

(b) in any other case, at the time when evidence of the damage first appears.

(3) Save where the context otherwise requires, references in this Act to any enactment shall be construed as references to that enactment as amended by or under any other enactment, including any enactment contained in this Act.

(4) Any notice required by this Act to be given to any person by the Board may be served by post in a registered letter addressed to that person at his usual or last known place of abode or, if that person is a body corporate, at the registered or principal office of the body corporate.

18.—(1) This Act may be cited as the Coal-Mining (Subsidence) Act, 1957.

Short title,
repeals and
extent.

(2) The provisions of this Act shall have effect notwithstanding anything in section fifty-nine of the Tramways Act, 1870 ; and the Coal-Mining (Subsidence) Act, 1950, shall not apply to any subsidence damage occurring after the date of the passing of this Act ; and no payment shall be made by the Minister to the Board under section eleven of the said Act of 1950 in respect of any expenditure incurred on or after that date.

(3) This Act shall not extend to Northern Ireland.

SCHEDULES

FIRST SCHEDULE

Sections 1, 4.

PROVISIONS AS TO DWELLING-HOUSES RENDERED UNINHABITABLE

1. Where a dwelling-house is affected by subsidence damage occurring after the passing of this Act, the provisions of this Schedule shall have effect as respects any period (in this Schedule referred to as "the period of dispossession") during which both the following conditions are satisfied, that is to say—

- (a) that by reason of deterioration due to the subsidence damage in the condition of the dwelling-house, and having regard to the time which will be required to remedy that deterioration, the dwelling-house is not in a reasonably fit state for it to be used as such ; and
- (b) that the dwelling-house is not used as such by or with the authority of the person who immediately before the occurrence of the subsidence damage was entitled to possession thereof (hereinafter in this Schedule referred to as "the occupier").

2.—(1) Subject to the provisions of this Schedule, in the case of any person ordinarily resident in the dwelling-house during the period immediately preceding the occurrence of the subsidence damage (hereinafter in this Schedule referred to as a "resident") the Board shall so long as the period of dispossession lasts be under an obligation at all times—

- (a) to make available alternative living accommodation which—
 - (i) is of a standard comparable to the general standard of the housing accommodation under the management of the local authority for the purposes of Part V of the Housing Act, 1936, or, as the case may be, for the purposes of the Housing (Scotland) Act, 1950, for the area in which the dwelling-house is situated ; and
 - (ii) is otherwise reasonable having regard to all the circumstances, including the probable duration of the period of dispossession ; or
- (b) as respects any of the first thirty days of the period of dispossession during which such alternative living accommodation as aforesaid is not made available, to pay to the resident in question the amount, if any, by which the aggregate expenditure reasonably incurred by him by way of rent, rates, food, living accommodation, heating, light and other household expenses exceeds what it would have been if the subsidence damage had not occurred and he had continued to reside in the dwelling-house ; or
- (c) as respects any other part of the period of dispossession during which such alternative living accommodation as aforesaid is not made available, to pay to the resident in question the amount aforesaid or the amount which would be payable by way of rent for accommodation equivalent to such alternative living accommodation as aforesaid whichever amount is the less :

Provided that the Board shall not be under any obligation under this sub-paragraph in respect of any part of the period of dispossession during which, irrespective of the subsidence damage, the resident in question would not have been residing at the dwelling-house.

(2) Where the Board are under an obligation towards a resident by virtue of the foregoing sub-paragraph, the Board shall also be under an obligation with respect to the contents of the dwelling-house to provide, or to pay to that resident any expenditure reasonably incurred by him in providing, for any removal or storage thereof reasonably required during the period of dispossession as a result of the subsidence damage and any removal thereof reasonably required as a result of the termination of the Board's obligations towards that resident under the foregoing sub-paragraph:

Provided that the Board shall not be under any obligation under this sub-paragraph in respect of the contents of any part of the dwelling-house which, immediately before the occurrence of the subsidence damage, was not used for the purposes of a private dwelling and the said obligations shall not extend to storage in or removal to any place outside Great Britain.

(3) Subject to the provisions of sub-paragraph (2) of paragraph 4 of this Schedule, and without prejudice to their liability under the two foregoing sub-paragraphs in respect of any part of the period of dispossession falling before the making of their election, the Board may elect which of the courses open to them under the two foregoing sub-paragraphs they will for the time being adopt in any particular case.

3.—(1) Subject to the two following sub-paragraphs, the obligations of the Board towards any resident under sub-paragraph (1) of the last foregoing paragraph shall cease, notwithstanding that the period of dispossession has not expired—

- (a) if the occupier has ceased (otherwise than by reason of his death) to be entitled to possession of, or, as the case may be, of the site of, the dwelling-house; or
- (b) on the expiration of a period of six months from the service by the Board on the resident in question of notice in writing of the opinion of the Board that the period of dispossession will continue indefinitely or that the said period will be unreasonably long or that the resident in question will not resume residence at or on the site of the dwelling-house at the expiration of that period.

(2) Where a damage notice has been served in respect of the dwelling-house, the Board shall not be entitled to serve a notice under sub-paragraph (b) of the foregoing sub-paragraph on the grounds that the period of dispossession will continue indefinitely or will be unreasonably long—

- (a) unless the Board have elected to make a payment in respect of the dwelling-house under subsection (3) or subsection (4) of section one of this Act; or
- (b) while a notice under subsection (2) of section three of this Act is in force with respect to the dwelling-house.

(3) Any person upon whom a notice under the said paragraph (b) is served may apply to the county court or, where the dwelling-house

1ST SCH.
—cont.

is situated in Scotland, to the sheriff, and the court or sheriff, if satisfied that there are not reasonable grounds for the opinion of the Board, may declare the notice to be of no effect.

4.—(1) The Board shall not be under any obligation by virtue of paragraph 2 of this Schedule unless either the owner or the occupier of the dwelling-house is a resident and has given to the Board notice in writing, in such a manner, within such time and containing such particulars as may be prescribed, that in his opinion the condition specified in sub-paragraph (a) of paragraph 1 of this Schedule is satisfied, and has afforded the Board reasonable facilities to inspect the dwelling-house so far as he was in a position to afford such facilities.

(2) As soon as reasonably practicable after receiving from any person a notice under the foregoing sub-paragraph, the Board shall give to that person notice in writing as to whether or not they agree with that person's opinion and, if they so agree, as to the manner in which they propose to discharge their obligations under paragraph 2 of this Schedule, and where in the circumstances of any particular case it appears to the Board appropriate so to do they may serve a separate notice such as aforesaid on any other resident; and where they have so given notice to any resident of an intention to adopt in his case the alternative set out in paragraph (a) or paragraph (c) of sub-paragraph (1) of the said paragraph 2, they shall not adopt in his case the other of those alternatives without his consent, which shall not be unreasonably withheld.

5.—(1) Where, in pursuance of paragraph (a) of sub-paragraph (1) of paragraph 2 of this Schedule, the Board have made alternative living accommodation available to a resident, the following provisions of this paragraph shall apply.

(2) The Board shall be entitled to possession of the accommodation so made available—

(a) in a case falling within paragraph (b) of sub-paragraph (1) of paragraph 3 of this Schedule, at the expiration of the period of six months mentioned in the said paragraph (b);

(b) without prejudice to any obligations of the Board under the said paragraph 2 or to the provisions of sub-paragraph (2) of the last foregoing paragraph, at any time not less than one week after the Board have served notice in writing on the resident in question of their intention to take possession;

and where notice is given under paragraph (b) of this sub-paragraph, the said obligations shall continue until the expiration of the said week or such longer period as may be specified in the notice notwithstanding that the period of dispossession may have expired.

(3) The Board shall be entitled to recover as a civil debt from the resident in question any amount by which the aggregate expenditure incurred by him by way of rent and rates is less than it would have been if the subsidence damage had not occurred and he had continued to reside in the dwelling-house, reduced by any amount by which that resident shows that the aggregate expenditure reasonably incurred by him by way of food, living accommodation (other than

rent or rates), heating, light and other household expenses is greater than it would have been in the circumstances aforesaid:

Provided that the Board shall not be entitled to recover any amount under this sub-paragraph in excess of the amount which would have been payable by way of rent for the alternative living accommodation if it had been provided by the local authority for the purposes of Part V of the Housing Act, 1936, or for the purposes of the Housing (Scotland) Act, 1950, for the area in which the dwelling-house is situated.

6. Where no damage notice has been served in respect of the dwelling-house or where the Board have elected to make a payment under subsection (3) or subsection (4) of section one of this Act, then, during any period while the Board are under an obligation by virtue of sub-paragraph (1) of paragraph 2 of this Schedule, they may exercise in the name of the occupier any right with respect to the repair of the dwelling-house exercisable by the occupier against any person other than the Board.

7. Where the Board have elected to make a payment in respect of the dwelling-house under paragraph (b) of subsection (3) of section one of this Act, the Board shall be entitled to recover as a civil debt from the owner of the dwelling-house any amount by which the expenditure of the Board under this Schedule in connection with the dwelling-house exceeds what it would have been if only remedial works had been executed.

8. Where a person entitled to serve a notice under paragraph 4 of this Schedule also has a right apart from this Act to claim from the Board or any other person compensation or damage in respect of any of the matters dealt with by this Schedule, he shall not be entitled to relief in respect of the same matters both under this Schedule and under that other right.

SECOND SCHEDULE

Sections 1, 8.

DETERMINATION OF AMOUNT OF DEPRECIATION AND RECIPIENTS OF CERTAIN PAYMENTS

1. For the purposes of determining under subsection (4) of section one of this Act the amount of the depreciation in the value of any property affected by subsidence damage which is caused by that damage, the unit of property to be taken into account shall be—

- (a) where any property which has suffered subsidence damage constitutes or is comprised in a rating unit, that rating unit; and
- (b) in any other case, such unit consisting of or comprising property which has suffered subsidence damage as may be determined by agreement between the Board and all persons entitled to serve a damage notice in respect of that damage or, in default of such agreement, in the manner provided by section thirteen of this Act, to be equitable in all the circumstances of the case:

Provided that a rating unit and property not included in any rating unit may, if it is determined as aforesaid to be equitable so to do, be

2ND SCH.
—cont.

treated for the purposes aforesaid as a single unit of property, and two or more rating units within the same curtilage and belonging to the same owner, or a rating unit part only of which has suffered subsidence damage, may in either case be treated for the purposes aforesaid either—

- (i) as a single unit of property ; or
- (ii) as consisting of such separate units of property as may be determined as aforesaid to be equitable in all the circumstances of the case,

as may be so determined.

2.—(1) For the purposes aforesaid the amount of the depreciation in the value of a unit of property caused by any subsidence damage shall be taken to be the amount by which the value of the property in the state in which it was immediately after the occurrence of the damage is less than the value of the property in the state in which it was immediately before the occurrence of the damage, and the value of the property in either of the said states shall be taken to be the amount which it might have been expected to realise in that state on a sale effected immediately after the damage occurred, being in the case of property comprising land or buildings a sale of the fee simple in the open market and with vacant possession subject to—

- (a) any restrictive covenant, easement, quasi-easement, or other right inuring for the benefit of other land ;
- (b) any public right of way, right of common, or other right inuring for the benefit of the public or of any section thereof ; and
- (c) any restriction imposed by or under any enactment,

to which the property was subject at the time immediately after the damage occurred, but free from any other incumbrance, and without regard to any liability of the property to become subject after the said time to any restriction by virtue of any enactment other than a closing order under section twelve of the Housing Act, 1936, or section ten of the Local Government (Miscellaneous Provisions) Act, 1953, or under or by virtue of section nine, ten, eleven or thirteen of the Housing (Scotland) Act, 1950 :

Provided that—

- (i) except where a demolition order under section eleven of the said Act of 1936, a clearance order under section twenty-six of that Act, a closing order under section ten of the said Act of 1953 or a compulsory purchase order was in force in respect of the property immediately before the date of the occurrence of the damage, if any payment or payments would have fallen to be made under section one of the Slum Clearance (Compensation) Act, 1956, in respect of any person's interest in the property upon a compulsory purchase thereof in pursuance of a notice to treat served immediately before that date, the amount of the depreciation in the value of the property caused by the damage shall not be taken to be less than the amount, if any, by which the full compulsory purchase value within the meaning of the said Act of

1956 of that interest, or of all such interests taken together, for the purposes of that compulsory purchase would have been reduced if the notice to treat had been served immediately after that date ;

- (ii) in the case of a unit of property consisting of or comprising property of a kind not normally the subject of sales in the open market, provision may be made by regulations made by the Minister for ascertaining the value of the property in any state by reference to such matters as may be specified in the regulations.

(2) In determining for the purposes of the foregoing sub-paragraph the value of any property in the state in which it was immediately after the occurrence of the damage, any right to a payment under subsection (4) of section one of this Act in respect of that damage shall be disregarded.

3. A payment under subsection (3) or subsection (5) of section one of this Act shall be made to the person by whom the cost of carrying out the works in question is incurred, or, if that cost is incurred partly by one person and partly by another, shall be apportioned between them in such manner as may be determined by agreement or, in default of agreement, in shares corresponding to their respective shares in the cost.

4. Subject to the provisions of this Act, a payment under subsection (4) of section one of this Act shall be made to the person who is for the time being the owner of the property in question:

Provided that—

- (a) if any other person is liable to make good the whole of the damage to which the payment relates, the payment shall be made to him ;
- (b) if any other person is liable to make good any part of that damage, such part of the amount of the payment shall be paid to him as bears to the whole of that amount the same proportion as the cost of meeting that liability bears to the cost of making good the whole of the damage.

5. Where the Board are satisfied that the interest in the property in question of any person to whom, apart from the provisions of this paragraph or paragraph 7 of this Schedule, the whole or part of a payment under the said subsection (4) would fall to be paid was, at the time immediately after the damage occurred, subject to a mortgage, the payment or that part thereof shall be paid to the mortgagee, and the mortgagee shall be liable to account therefor as if it had been proceeds of sale of that interest arising under a power of sale exercised by the mortgagee at the said time, except that the mortgagee shall not be entitled to credit for any costs incurred by him in connection with the claiming, ascertainment, apportionment or making of the payment :

Provided that—

- (a) if at the time when the payment is made the debt secured by the mortgage (other than any part thereof representing

2ND SCH.
—cont.

costs for which the mortgagee would not be entitled to credit) has been paid in full, the payment shall be disposed of as if the interest had not been subject to the mortgage ;

- (b) if the interest was subject to two or more successive mortgages, this paragraph shall have effect with the substitution for references to the mortgagee of references to the first mortgagee, or, if the preceding sub-paragraph has effect in relation to the first mortgage, to the second mortgagee, and so on ; and
- (c) in any case this paragraph shall have effect, as regards any mortgage, subject to any agreement between the mortgagee and the person who apart from that mortgage would have been entitled to receive the payment or part thereof.

6.—(1) The Minister may by regulations make provision as to the person to whom any payment under the said subsection (4) or any part thereof is to be paid in cases where the interest in the property in question of a person to whom, apart from the provisions of this or the next following paragraph, the whole or part of the payment would fall to be paid was at the time immediately after the damage occurred subject to a rentcharge ; and any such regulations may apply all or any of the provisions of section twenty-five of the War Damage Act, 1943 (which relates to the rights of owners of rentcharges as to payments for war damage), subject to such adaptations and modifications as may be specified in the regulations.

(2) In this paragraph the expression “rentcharge” means any annual sum charged on the property, not being rent incidental to a reversion.

7. Where the interest in the property in question of the person to whom, apart from the provisions of this paragraph, the whole or part of a payment under the said subsection (4) would fall to be paid is subject to a settlement or otherwise held in such manner that the person entitled to the interest would not be competent to give an effective discharge for the proceeds of a sale thereof, that payment or that part thereof shall be paid to the person so competent.

8. Where the interest in the property in question of the person to whom the whole or part of a payment under the said subsection (4) falls to be paid, or the proceeds of sale of that interest, are the subject of a devise or bequest, that devise or bequest shall be deemed to include that payment or that part thereof.

9. Where the interest in the property in question of the person to whom the whole or part of a payment under the said subsection (4) falls to be paid is the subject of a contract of sale or of a notice to treat served under an enactment authorising the compulsory acquisition thereof, being a contract made or notice served before the damage occurred, that payment or that part thereof shall, unless the contract is rescinded or the notice ceases to have effect, be held by that person upon trust for the purchaser :

Provided that any lien upon that interest to which that person is entitled by virtue of the contract shall extend to that payment or that part thereof.

2ND SCH.
—cont.

10. In the application of this Schedule to Scotland—

(a) paragraph 7 shall not apply, but where the interest in the property in question of the person to whom the whole or part of a payment under subsection (4) of section one of this Act falls to be paid is subject to a trust within the meaning of the Trusts (Scotland) Act, 1921, or to an entail or to a life-rent, that person shall hold and apply that payment or that part thereof in like manner as if the interest had been acquired under compulsory powers and the payment or that part thereof were the purchase money or compensation for that interest ;

(b) the following expressions have the following meanings respectively, that is to say—

“ fee simple ” means, in the case of feudal property, the estate or interest of the proprietor of the dominium utile, or, in the case of property other than feudal property, the estate or interest of the owner ;

“ incumbrance ” means any ground annual or other incumbrance or any liability to pay feuduty ;

“ easement ” means servitude ;

“ mortgage ” means—

(i) a heritable security within the meaning of the Conveyancing (Scotland) Act, 1924, exclusive of a security by way of ground annual and a real burden ad factum praestandum but inclusive of a security constituted by ex facie absolute disposition ; or

(ii) an assignation in security of a lease recorded under the Registration of Leases (Scotland) Act, 1857 ;

and “ mortgagee ” shall be construed accordingly ;

“ rentcharge ” means a feuduty or a ground annual.

Table of Statutes referred to in this Act

Short Title	Session and Chapter
Lands Valuation (Scotland) Act, 1854 ...	17 & 18 Vict. c. 91.
Registration of Leases (Scotland) Act, 1857	20 & 21 Vict. c. 26.
Tramways Act, 1870	33 & 34 Vict. c. 78.
Ancient Monuments Protection Act, 1882 ...	45 & 46 Vict. c. 73.
Crofters Holdings (Scotland) Act, 1886 ...	49 & 50 Vict. c. 29.
Sheriff Courts (Scotland) Act, 1907	7 Edw. 7. c. 51.
Small Landholders (Scotland) Act, 1911 ...	1 & 2 Geo. 5. c. 49.
Ancient Monuments Consolidation and Amendment Act, 1913	3 & 4 Geo. 5. c. 32.
Trusts (Scotland) Act, 1921	11 & 12 Geo. 5. c. 58.
Conveyancing (Scotland) Act, 1924... ..	14 & 15 Geo. 5. c. 27.
Settled Land Act, 1925	15 & 16 Geo. 5. c. 18.
Law of Property Act, 1925	15 & 16 Geo. 5. c. 20.
Universities and College Estates Act, 1925 ...	15 & 16 Geo. 5. c. 24.
Landlord and Tenant Act, 1927	17 & 18 Geo. 5. c. 36.
Rating and Valuation (Apportionment) Act, 1928	18 & 19 Geo. 5. c. 44.
Doncaster Area Drainage Act, 1929	19 & 20 Geo. 5. c. xvii.
Land Drainage Act, 1930	20 & 21 Geo. 5. c. 44.
County Courts Act, 1934	24 & 25 Geo. 5. c. 53.
Housing Act, 1936	26 Geo. 5 & 1 Edw. 8. c. 51.
War Damage Act, 1943	6 & 7 Geo. 6. c. 21.
Agriculture Act, 1947... ..	10 & 11 Geo. 6. c. 48.
Agriculture (Scotland) Act, 1948	11 & 12 Geo. 6. c. 45.
Agricultural Holdings Act, 1948	11 & 12 Geo. 6. c. 63.
Agricultural Holdings (Scotland) Act, 1949	12, 13 & 14 Geo. 6. c. 75.
Coal-Mining (Subsidence) Act, 1950	14 Geo. 6. c. 23.
Housing (Scotland) Act, 1950	14 Geo. 6. c. 34.
Local Government (Miscellaneous Provi- sions) Act, 1953	1 & 2 Eliz. 2. c. 26.
Mines and Quarries Act, 1954	2 & 3 Eliz. 2. c. 70.
Crofters (Scotland) Act, 1955	3 & 4 Eliz. 2. c. 21.
Slum Clearance (Compensation) Act, 1956	4 & 5 Eliz. 2. c. 57.

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