



Coal Mining Subsidence Act 1991

1991 CHAPTER 45

PART II

REMEDIAL ACTION

General

2 Duty to take remedial action

- (1) Subject to and in accordance with the provisions of this Part, it shall be the duty of the British Coal Corporation (“the Corporation”) to take in respect of subsidence damage to any property remedial action of one or more of the kinds mentioned in subsection (2) below.
- (2) The kinds of remedial action referred to in subsection (1) above are—
 - (a) the execution of remedial works in accordance with section 7 below;
 - (b) the making of payments in accordance with section 8 or 9 below in respect of the cost of remedial works executed by some other person; and
 - (c) the making of a payment in accordance with section 10 or 11 below in respect of the depreciation in the value of the damaged property.
- (3) References in this Act, in relation to any subsidence damage, to the Corporation’s remedial obligation are references to their obligation under subsection (1) above.
- (4) Where emergency works are executed by any other person, the Corporation shall also be under a duty, subject to the provisions of this Part, to make a payment in accordance with section 12 below in respect of the cost of the works.
- (5) In this Act—
 - (a) references to payments in lieu are references to payments in accordance with section 8 or 9 below; and
 - (b) references to depreciation payments are references to payments in accordance with section 10 or 11 below.

3 Notice of subsidence damage

(1) The Corporation shall not be required under section 2(1) or (4) above to take any remedial action or make any payment in respect of the cost of emergency works, unless the owner of the property or some other person who is liable to make good the damage in whole or in part—

- (a) has given to the Corporation the required notice with respect to the damage within the period allowed by this section; and
- (b) has afforded the Corporation reasonable facilities to inspect the property, so far as he was in a position to do so.

(2) The required notice with respect to any subsidence damage is a notice stating that the damage has occurred and containing such particulars as may be prescribed; and references in this Act, in relation to any subsidence damage, to a damage notice are references to such a notice with respect to the damage given within the period allowed by this section.

(3) The period allowed by this section for giving a damage notice with respect to any subsidence damage is the period of six years beginning with the first date on which any person entitled to give the notice had the knowledge required for founding a claim in respect of the damage.

(4) For the purposes of subsection (3) above, the knowledge required for founding a claim in respect of any subsidence damage is knowledge—

- (a) that the damage has occurred; and
- (b) that the nature of the damage and the circumstances are such as to indicate that the damage may be subsidence damage;

and a person's knowledge includes knowledge which he might reasonably have been expected to acquire from the facts mentioned in subsection (5) below.

(5) Those facts are—

- (a) any facts which were observable or ascertainable by him; and
- (b) any facts which would have been ascertainable by him with the help of any expert advice which it was reasonable for him to seek.

(6) In this Act—

“the claimant”, in relation to any subsidence damage, means the person who gave or, as the case may be, was the first person to give a damage notice to the Corporation in respect of the damage, and includes any successor in title of his;

“any other person interested”, in relation to any such damage and any time, means any person other than the claimant who, not less than 7 days before that time, gave such a notice to the Corporation in respect of the damage, and includes any successor in title of any such person.

4 Initial response to damage notice

(1) As soon as reasonably practicable—

- (a) after receiving a damage notice; or
- (b) where they receive two or more such notices in respect of the same damage, after receiving the first of them,

the Corporation shall give to the claimant, and to any other person interested, a notice indicating whether or not they agree that they have a remedial obligation in respect of the whole or any part of the damage specified in the damage notice.

- (2) Where the Corporation give a notice under subsection (1) above indicating their agreement that they have such an obligation, they shall also give to the claimant, and to any other person interested, a notice—
 - (a) stating the kind or kinds of remedial action available for meeting that obligation and, if more than one, which of them the Corporation propose to take; and
 - (b) in the case of a notice stating that the Corporation propose to execute remedial works with respect to any damage, informing the claimant or that person that, if he makes such a request as is mentioned in section 8(3) below, the Corporation may elect to make a payment in lieu instead of executing the works.
- (3) Where the Corporation accede to any such request, they shall give to the claimant and any other person interested a revised notice under subsection (2) above stating that they propose to elect to make a payment in lieu instead of executing the works.
- (4) In this Act references, in relation to any damage, to a notice of proposed remedial action are references to a notice under subsection (2) above (whether as originally given or as revised under subsection (3) above).

5 Determination of appropriate remedial action

- (1) Subject to sections 9 and 11 below (obligatory payments in lieu and obligatory depreciation payments), where the Corporation have given a notice of proposed remedial action with respect to any damage, they shall meet their remedial obligation in respect of that damage by taking the appropriate remedial action (and not in any other way).
- (2) Subject to subsections (4) and (6) below, the appropriate remedial action in relation to any damage is that stated in the notice of proposed remedial action with respect to that damage.
- (3) Where—
 - (a) the Corporation have power under section 8 or 10 below to elect to make a payment in accordance with that section in respect of any damage; and
 - (b) they have not exercised that power by stating in the notice of proposed remedial action with respect to that damage that they propose to make such a payment,the Corporation may exercise that power at any time subsequent to the date of that notice, but only with the agreement of the claimant and any other person interested.
- (4) Where after the date of that notice the Corporation elect under either of those sections to take in respect of any damage any remedial action other than that stated in the notice (“the substituted action”), so long as the election is effective the appropriate remedial action in relation to that damage is the substituted action.
- (5) An election by the Corporation under either of those sections may at any time be revoked by the Corporation, but only with the agreement of the claimant and any other person interested.

- (6) Where the Corporation revoke such an election made in respect of any damage by a notice of proposed remedial action, this section shall apply as if the execution of remedial works had been specified in that notice as the Corporation's proposed remedial action with respect to that damage.

6 Schedule of remedial works

- (1) At the same time as the Corporation give a notice of proposed remedial action with respect to any damage, other than a notice stating that the only kind of action available for meeting their remedial obligation is the making of a payment under section 9 or 11 below, they shall send to the claimant and any other person interested ("the other parties") a schedule of remedial works which meets the requirements of this section.
- (2) A schedule of remedial works shall specify—
- (a) the works which the Corporation consider to be remedial works in relation to the damage, that is to say, such works (including works of redecoration) as are necessary in order to make good the damage, so far as it is reasonably practicable to do so, to the reasonable satisfaction of the claimant and any other person interested; and
 - (b) in the case of each item of those works, the amount of the cost which the Corporation consider it would be reasonable for any person to incur in order to secure that the work is executed.
- (3) The Corporation shall send with a schedule of remedial works a notice stating that, if any other party does not agree that the remedial action to be taken by the Corporation in respect of any damage should be determined by reference (where relevant) to the works and costs specified in the schedule, he should notify the Corporation within the period of 28 days beginning with the date of his receipt of the schedule.
- (4) If any other party gives such a notification within that period and he and the Corporation do not agree the schedule, with or without modifications, before the end of the next succeeding period of 28 days, the matter may be referred to the Lands Tribunal, which may determine the works and costs to be specified in the schedule.
- (5) A schedule of remedial works relating to any damage—
- (a) comes into effect—
 - (i) if no other party gives such a notification to the Corporation within the period mentioned in subsection (3) above, at the end of that period; and
 - (ii) in any other case, on the date on which the schedule is agreed or determined under subsection (4) above; and
 - (b) may at any time be varied by agreement between the parties or in any manner determined under subsection (6) below.
- (6) Where—
- (a) any party by a notice given to the other party or parties requests a variation of a schedule of remedial works; and
 - (b) the variation requested is not agreed between both or all parties, with or without modifications, before the end of the period of 28 days beginning with the date of the notice,

the matter may be referred to the Lands Tribunal, which may determine whether the schedule shall have effect subject to the variation.

- (7) On and after the date on which a schedule of remedial works relating to any damage first comes into effect the works specified in the schedule (and only those works) shall be regarded as remedial works in relation to the damage.
- (8) References in this Act, in relation to any subsidence damage, to the schedule of remedial works are references to the schedule of remedial works under this section relating to the damage, as that schedule has effect for the time being.