



Coal Mining Subsidence Act 1991

1991 CHAPTER 45

PART II

REMEDIAL ACTION

The kinds of remedial action available

7 Execution of remedial works

- (1) This section applies where the Corporation are under an obligation to execute remedial works in respect of any damage.
- (2) The Corporation shall execute the remedial works as soon as reasonably practicable after the date on which a schedule of remedial works first comes into effect in relation to the damage.
- (3) If so requested by the claimant or any other person interested at any time before the remedial works are completed, the Corporation shall give to him in writing adequate information with respect to any of those works still remaining to be executed.

8 Discretionary payments in lieu

- (1) The Corporation may elect to make payments in respect of the cost of remedial works instead of executing such works themselves in any of the cases mentioned below in this section.
- (2) In any case where the Corporation receive the necessary request for that purpose from the claimant or any other person interested, they may elect to make, in respect of the cost incurred by a person other than themselves in executing any of the remedial works, a payment equal to the aggregate amount of the costs specified in relation to those works in the schedule of remedial works.
- (3) For the purposes of subsection (2) above, the necessary request is a request informing the Corporation that the person making the request wishes to execute the remedial

works in question himself or to have them executed on his behalf by a person specified in the request.

- (4) In any case where it is proposed—
- (a) to merge the execution of other works in connection with the damaged property with the execution of remedial works; or
 - (b) to redevelop the damaged property instead of executing remedial works,
- the Corporation may elect to make a payment equal to any sums from time to time shown to have been expended by any other person in executing the merged works or the redevelopment works, up to an aggregate amount not exceeding the aggregate amount of the costs specified in the schedule of works (“the total scheduled cost”).
- (5) Where in the case of any property affected by subsidence damage—
- (a) immediately before the subsidence damage became evident the property was in a state of disrepair;
 - (b) it is not practicable to execute remedial works without including in those works additional works which would not be necessary but for the disrepair (“the works attributable to the disrepair”); and
 - (c) the total scheduled cost is higher by at least 20 per cent. than it would have been if the costs of the works attributable to the disrepair had not been included,
- the Corporation may elect to make in respect of the cost incurred by any other person in executing remedial works a payment equal to the amount by which the total scheduled cost exceeds the aggregate amount of the costs specified in the schedule of works in respect of the works attributable to the disrepair.
- (6) In any case within subsection (5) above, the schedule of remedial works shall distinguish the works attributable to the disrepair from the works which would be necessary apart from the disrepair.
- (7) The Corporation shall not unreasonably refuse—
- (a) any request complying with subsection (3) above to make an election under subsection (2) above; or
 - (b) any request received from the claimant or any other person interested to make an election under subsection (4) above.
- (8) Subject to subsection (9) below, the Corporation are to be regarded as acting unreasonably in refusing any request falling within subsection (7)(a) above which is received before they have begun to execute remedial works.
- (9) Subsection (8) above does not apply where—
- (a) the Corporation have acceded to another such request made by another person;
 - (b) the execution of remedial works by a person other than the Corporation would significantly impede the discharge of their remedial obligation in respect of one or more neighbouring properties; or
 - (c) where the damage has rendered the property structurally unsound, the execution of such works by the person by whom the request was made or, as the case may be, by the person specified in the request would be unlikely to restore the structural integrity of the property,

and (in any case) as soon as reasonably practicable after receiving the request the Corporation give notice to that effect to the person by whom the request was made.

- (10) The Corporation are not to be regarded as acting unreasonably in refusing any request falling within subsection (7) above which is received after they have begun to execute remedial works.
- (11) An election under this section, and any revocation of such an election, shall be made by a notice given to the claimant and any other person interested.
- (12) The Secretary of State may by order substitute for the percentage specified in subsection (5)(c) above (whether as originally enacted or as previously amended under this subsection) such other percentage as he thinks fit.

9 Obligatory payments in lieu

- (1) In any case to which this section applies the Corporation shall meet their remedial obligation in respect of any damage by making a payment under this section.
- (2) This section applies to the following cases—
 - (a) where the damaged property is—
 - (i) in England and Wales, a highway maintainable at the public expense; or
 - (ii) in Scotland, a public road (within the meaning of the Roads (Scotland) Act 1984);
 - (b) where the execution of remedial works falls within a duty with respect to the damaged property which, in connection with the maintenance of public services, is imposed by virtue of any enactment on—
 - (i) a government department;
 - (ii) a local authority; or
 - (iii) statutory undertakers;
 - (c) where it is certified by the Secretary of State, 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 Corporation should themselves execute the remedial works.
- (3) Subject to subsection (4) below, the payment required under this section in respect of any damage is a payment equal to the cost reasonably incurred by any person in executing remedial works.
- (4) Where remedial works are executed after the end of the period of three years beginning with the date of the claimant's damage notice, the amount of any payment under subsection (3) above shall not exceed the cost which might reasonably have been expected to have been incurred in executing those works if they had been executed immediately before the end of that period.

10 Discretionary depreciation payments

- (1) In any case to which this section applies the Corporation may elect to make a payment equal to the amount of the depreciation in the value of the damaged property caused by the damage (“the depreciation amount”) instead of executing any remedial works or making any payment in lieu.
- (2) This section applies to the following cases—
 - (a) where the aggregate amount of the costs specified in the schedule of remedial works exceeds the depreciation amount by at least 20 per cent.;

Status: This is the original version (as it was originally enacted).

- (b) where the property is not a dwelling-house and the Corporation and the person or persons to whom any payment would fall to be made in accordance with this section agree that such a payment should be made;
 - (c) where the property is a dwelling-house and it appears to the Corporation that a notice to treat is likely to be served for the compulsory purchase of the dwelling-house under housing clearance powers in such circumstances that the compulsory purchase will be attributable to the subsidence damage.
- (3) The Secretary of State may by order substitute for the percentage specified in subsection (2)(a) above (whether as originally enacted or as previously amended under this subsection) such other percentage as he thinks fit; and an order under this subsection may provide for different percentages to apply in relation to different descriptions of property.
- (4) An election under this section, and any revocation of such an election, shall be made by a notice given to the claimant and any other person interested.
- (5) References in this section and section 11 below to the service of a notice to treat are references to—
- (a) the service of such a notice under section 5 of the Compulsory Purchase Act 1965; or
 - (b) the service or deemed service of such a notice under section 17 of the Lands Clauses Consolidation (Scotland) Act 1845.

11 Obligatory depreciation payments

- (1) Where in the case of any dwelling-house affected by subsidence damage, at any time before the completion of remedial works or, in a case falling within section 8(4) above, at any time before all sums in respect of which the Corporation are liable to make payments have been expended—
- (a) a notice to treat for the compulsory purchase of the dwelling-house under housing clearance powers is served in such circumstances that the compulsory purchase will be attributable to the damage; or
 - (b) a demolition or closing order is made in respect of the dwelling-house under housing clearance powers in such circumstances that the making of the order is so attributable,
- the Corporation shall make in respect of the dwelling-house a payment equal to the amount of the depreciation in the value of the dwelling-house caused by the damage.
- (2) Subsection (1) above applies without prejudice to any expenditure or liability of the Corporation under section 7 or 8 above in respect of works already executed; and where the Corporation make a payment under that subsection no further action is required of them under this Part in pursuance of their remedial obligation in respect of the dwelling-house.
- (3) Where in the case of any property affected by subsidence damage—
- (a) remedial works have been executed; but
 - (b) there is a depreciation in the value of the property caused by any damage the making good of which to the reasonable satisfaction of the claimant and any other person interested was not reasonably practicable,
- the Corporation shall make in respect of the property a payment equal to the amount of that depreciation.

- (4) References in subsection (1)(b) above to the making of a demolition or closing order in respect of the dwelling-house include, in relation to England and Wales, references to an area in which the dwelling-house is situated being declared to be a clearance area.

12 Payments in respect of emergency works

- (1) The payment required by section 2(4) above in respect of emergency works, that is to say, works urgently and reasonably required—
- (a) in order that the damaged property may continue to be used for the purposes for which it was used immediately before the damage became evident; or
 - (b) in order to prevent the property being affected by further subsidence damage, is a payment equal to the cost reasonably incurred by any person other than the Corporation in executing those works.
- (2) The Corporation shall not be required to make any payment in respect of any emergency works executed by any other person in connection with any property—
- (a) unless that person—
 - (i) has given to the Corporation as soon as was reasonably practicable in all the circumstances a notice containing adequate particulars of those works; and
 - (ii) has afforded the Corporation reasonable facilities to inspect the property, so far as he was in a position to do so; or
 - (b) if the emergency works are executed after the Corporation have elected under section 10 above to make a depreciation payment in respect of the damaged property.
- (3) Any payment in respect of emergency works shall be made to the person or persons by whom the cost of executing the works in question is (or is to be) incurred; and, if there are two or more such persons, the payment shall be apportioned between them—
- (a) in such manner as may be determined by agreement; or
 - (b) in default of agreement, in shares corresponding to their respective shares in the cost.