



Coal Mining Subsidence Act 1991

1991 CHAPTER 45

PART II

REMEDIAL ACTION

Commencement Information

II Part II wholly in force at 30. 11. 1991 see [s. 54\(2\)](#) and [S.I. 1991/2508, art. 2](#)

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—

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- (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.

Commencement Information

I2 S. 2 wholly in force at 30. 11. 1991 see s. 54(2) and S.I.1991/2508, art. 2

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

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that time, gave such a notice to the Corporation in respect of the damage, and includes any successor in title of any such person.

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I3 S. 3 wholly in force at 30. 11. 1991 see s. 54(2) and S.I. 1991/2508, art. 2

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).

Commencement Information

I4 S. 4 wholly in force at 30. 11. 1991 see s. 54(2) and S.I. 1991/2508, art. 2.

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).

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- (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.

Commencement Information

I5 S. 5 wholly in force at 30. 11. 1991 see s. 54(2) and S.I. 1991/2508, art.2.

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

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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 [^{F1}appropriate 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 [^{F2}appropriate 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.

Textual Amendments

- F1** Words in s. 6(4) substituted (1.6.2009) by [The Transfer of Tribunal Functions \(Lands Tribunal and Miscellaneous Amendments\) Order 2009 \(S.I. 2009/1307\)](#), art. 1, [Sch. 1 para. 217](#) (with Sch. 5)
- F2** Words in s. 6(6) substituted (1.6.2009) by [The Transfer of Tribunal Functions \(Lands Tribunal and Miscellaneous Amendments\) Order 2009 \(S.I. 2009/1307\)](#), art. 1, [Sch. 1 para. 217](#) (with Sch. 5)

Commencement Information

- I6** S. 6 wholly in force at 30. 11. 1991 see s. 54(2) and [S.I. 1991/2508](#), [art. 2](#)

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.

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- (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.

Commencement Information

I7 S. 7 wholly in force at 30. 11. 1991 see s. 54(2) and S.I. 1991/2508, art. 2

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.

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- (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.

Modifications etc. (not altering text)

C1 S. 8(9) modified (31.10.1994) by 1994 c. 21, s. 43, **Sch. 6 para. 2** (with ss. 40(7), 66); S.I. 1994/2553, **art. 2**

Commencement Information

I8 S. 8 wholly in force at 30.11.1991 see s. 54(2) and S.I. 1991/2508, **art. 2**

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—

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- (i) in England and Wales, a highway maintainable at the public expense; or
 - (ii) in Scotland, a public road (within the meaning of the ^{M1}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.

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I9 S. 9 wholly in force at 30. 11. 1991 see s. 54(2) and S.I. 1991/2508, art. 2

Marginal Citations

M1 1984 c. 54.

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.;
 - (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 ^{F3}. . . 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

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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 ^{M2}Compulsory Purchase Act 1965; or
 - (b) the service or deemed service of such a notice under section 17 of the ^{M3}Lands Clauses Consolidation (Scotland) Act 1845.

Textual Amendments

F3 Words in s. 10(2)(c) repealed (31.10.1994) by 1994 c. 21, ss. 43, 67(8), Sch. 6 para. 3(1), **Sch. 11 Pt. II** (with ss. 40(7), 66); S.I. 1994/2553, **art. 2**

Commencement Information

I10 S. 10 wholly in force at 30. 11.1991 see s. 54(2) and S.I. 1991/2508, **art. 2**.

Marginal Citations

M2 1965 c. 56.

M3 1845 c. 19.

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,

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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.

Commencement Information

I11 S. 11 wholly in force at 30. 11. 1991 see s. 54(2) and S.I. 1991/2508, art. 2

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.

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I12 S. 12 wholly in force at 30. 11. 1991 see s. 54(2) and S.I. 1991/2508, art. 2

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Payments in lieu and depreciation payments

13 Payments in lieu.

- (1) The Corporation shall not be required to make any payment in lieu in respect of any works executed by any other person in connection with any property unless that person—
 - (a) has given to the Corporation the required notice with respect to the works; 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 works is a notice which—
 - (a) contains adequate particulars of the works; and
 - (b) except in such circumstances as may be prescribed, is given at the prescribed interval before the works are begun.
- (3) Subject to subsection (5) below, the Corporation may make payments in respect of any proposed expenditure qualifying for a payment in lieu (“advance payments”).
- (4) For the purposes of subsection (3) above, proposed expenditure is expenditure qualifying for a payment in lieu if it is expenditure of a description in respect of which a payment in lieu would be required if it had been incurred.
- (5) An advance payment—
 - (a) may only be made if the Corporation are satisfied that it will be applied in meeting the expenditure in question; and
 - (b) shall be regarded for the purposes of this Act as made in accordance with the provision of section 8 or 9 above which requires the payment in lieu on account of which it is made.
- (6) The Corporation shall not unreasonably refuse any request to make an advance payment received from the person or persons by whom the cost of executing the works in question is to be incurred.
- (7) Any payment in lieu (including an advance payment) 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.
- (8) So far as not made by virtue of subsection (3) above before the expenditure in question is incurred, any payment in lieu shall be made as soon as reasonably practicable after the expenditure in respect of which it is required to be made has been incurred.

Modifications etc. (not altering text)

C2 S. 13(2)(b) excluded (30.11.1991) by 1991/2509, arts. 1, 3(1)

Commencement Information

I13 S. 13 wholly in force at 30.11.1991 see s. 54(2) and S.I. 1991/2508, art. 2

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14 Depreciation payments: general.

- (1) The Corporation shall not make a depreciation payment in respect of subsidence damage to a dwelling-house, other than a payment under section 11(3) above, except after consultation with—
 - (a) the local authority within the meaning of the ^{M4}Housing Act 1985; or
 - (b) the local authority within the meaning of the ^{M5}Housing (Scotland) Act 1987, in whose area the dwelling-house is situated.
- (2) The Corporation shall not make a depreciation payment in respect of subsidence damage to any property other than a dwelling-house, where that property is of any description prescribed for the purposes of this subsection, except after consultation with such Minister of the Crown or other person as may be so prescribed in relation to that description of property.
- (3) Any depreciation payment shall be made as soon as reasonably practicable after the obligation to make it arises.
- (4) Schedule 1 to this Act applies for determining—
 - (a) the unit of property to be taken into account for any purposes of section 10 or 11 above; and
 - (b) the amount of any depreciation in the value of any such unit in respect of which a depreciation payment falls to be made;
 and interest shall be payable in respect of any depreciation payment in accordance with that Schedule.

Commencement Information

I14 S. 14 wholly in force at 30. 11. 1991 see s. 54(2) and S.I. 1991/2508, art. 2

Marginal Citations

M4 1985 c. 68.

M5 1987 c. 26.

15 Recipients of depreciation payments.

- (1) Subject to the provisions of this section, a depreciation payment shall be made to the person who is for the time being the owner of the property in question.
- (2) 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.
- (3) 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 scheduled cost of works for which he is responsible bears to the total scheduled cost.
- (4) In subsection (3) above—
 - (a) the reference to the scheduled cost of works for which the other person is responsible is a reference to the aggregate amount of the costs specified in the schedule of remedial works in respect of works required for making good the part of the damage which he is liable to make good; and

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- (b) the reference to the total scheduled cost is a reference to the aggregate amount of all costs specified in the schedule of remedial works.
- (5) Schedule 2 to this Act applies for determining the persons who are to receive depreciation payments in special cases; and references in this section and that Schedule to a depreciation payment or part of such a payment include any interest payable in respect of that payment or that part in accordance with Schedule 1 to this Act.

Modifications etc. (not altering text)

C3 S. 15 amended (31.10.1994) by 1994 c. 21, s. 43, **Sch. 6 para. 4** (with ss. 40(7), 66); S.I. 1994/2553, **art. 2**

Commencement Information

I15 S. 15 wholly in force at 30.11.1991 see s. 54(2) and S.I. 1991/2508, **art.2**

Further damage

16 Stop notices where further damage is likely.

- (1) This section applies where at any time—
- (a) a damage notice has been given to the Corporation in respect of subsidence damage to any property; and
 - (b) it appears ^{F4}. . . to be probable that further subsidence damage will occur to that property within the period of eighteen months beginning with that time; and it shall be the duty of the Corporation, as soon as reasonably practicable after receiving such a notice, to consider whether [^{F5}the condition mentioned in paragraph (b) above is satisfied].
- (2) The Corporation may give to the claimant and any other person interested a notice to the effect that, except for—
- (a) emergency works; and
 - (b) such other works (if any) as may be specified in the notice (“excepted works”), the Corporation will neither execute any works for making good the damage while the notice remains in force nor make any payments in respect of such works executed while the notice remains in force.
- (3) It shall be the duty of the Corporation to specify in such a notice such works (if any) as are required in order to render the damaged property reasonably fit to be used for the purposes for which it was used immediately before the damage became evident, not being—
- (a) emergency works; or
 - (b) works the execution of which is not reasonably practicable in all the circumstances of the case.
- (4) References in this Act, in relation to any damage, to a stop notice are references to a notice under this section relating to the damage.
- (5) Except in such circumstances as may be prescribed, where the Corporation give a stop notice to any person with respect to any damage—

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- (a) the Corporation’s remedial obligation to that person in respect of the damage shall be subject to the terms of that notice;
 - (b) any notice affecting the required remedial action in respect of the damage given by the Corporation before the stop notice is given shall cease to have effect, except in so far as it relates to excepted works;
 - (c) any schedule of remedial works relating to the damage sent to that person before the stop notice is given shall not take effect or (as the case may be) shall cease to have effect, except in so far as it relates to excepted works and related costs;
 - (d) any period during which the stop notice is in force shall be disregarded in reckoning the period mentioned in subsection (4) of section 9 above (claim for obligatory payments in lieu), except for the purposes of the application of that section in relation to any excepted works;
 - (e) so long as the stop notice is in force the Corporation shall not be required to give any notice of proposed remedial action in respect of the damage or to send to that person any schedule of remedial works, except so far as any such notice or schedule is required for the purposes of excepted works; and
 - (f) in the case excepted from paragraph (e) above, the provisions of this Part shall apply as if—
 - (i) the Corporation’s remedial obligation in respect of the damage were limited to such part of the damage as can be remedied or alleviated by the excepted works; and
 - (ii) references to such works as are necessary in order to make good the damage to that person’s reasonable satisfaction were references to the excepted works.
- (6) A stop notice given to any person with respect to any damage shall not have effect unless it is given within the period of three months beginning with the relevant time, or such longer period beginning with that time as may be agreed between the Corporation and that person.
- (7) In subsection (6) above “the relevant time” means—
- (a) the time when it first appears ^{F4}. . . to be probable that further subsidence damage will occur to the property within the next succeeding period of eighteen months; or
 - (b) any later time when it first appears ^{F6}. . . that any such damage will be substantially more serious than appeared to them at that earlier time.
- (8) The Secretary of State may by order substitute for the period specified in subsection (6) above (whether as originally enacted or as previously amended under this subsection) such other period as he thinks fit.

Textual Amendments

- F4** Words in s. 16(1)(b)(7)(a) repealed (31.10.1994) by 1994 c. 21, ss. 43, 67(8), Sch. 6 para. 3(1), **Sch. 11 Pt. II** (with ss. 40(7), 66); S.I. 1994/2553, **art. 2**
- F5** Words in s. 16(1) substituted (31.10.1994) by 1994 c. 21, s. 43, **Sch. 6 para. 3(2)(a)** (with ss. 40(7), 66); S.I. 1994/2553, **art. 2**
- F6** Words in s. 16(7)(b) repealed (31.10.1994) by 1994 c. 21, ss. 43, 67(8), Sch. 6 para. 3(2)(b), **Sch. 11 Pt. II** (with ss. 40(7), 66); S.I. 1994/2553, **art. 2**

Changes to legislation: There are currently no known outstanding effects for the Coal Mining Subsidence Act 1991, Part II. (See end of Document for details)

Commencement Information

I16 S. 16 wholly in force at 30. 11. 1991 see s. 54(2) and S.I. 1991/2508, **art. 2**

17 Revocation and review of stop notices.

- (1) It shall be the duty of the Corporation to revoke any stop notice relating to any damage to any property if—
 - (a) at any time, it no longer appears ^{F7} . . . to be probable that further damage will occur to that property within the period of eighteen months beginning with that time; or
 - (b) at any time after the end of the period of three years beginning with the relevant date, the claimant and any other person interested request the Corporation to revoke it.
- (2) Where a stop notice has been given with respect to any damage, it shall be the duty of the Corporation to consider, initially not later than twelve months after the date on which the notice was given and subsequently at intervals not exceeding twelve months, whether to revoke it.
- (3) Where a stop notice given to any person with respect to any damage is revoked—
 - (a) a fresh notice of proposed remedial action relating to the damage (or so much of it as has not been made good by any emergency works or any excepted works within the meaning of section 16 above) shall be given by the Corporation to that person as soon as reasonably practicable after the date of the revocation;
 - (b) any such notice of proposed remedial action which is effective immediately before that date shall cease to have effect on the giving of a fresh notice in accordance with paragraph (a) above; and
 - (c) any schedule of remedial works relating to the damage which is effective immediately before that date shall cease to have effect when the schedule of remedial works sent under section 6(1) above in connection with the fresh notice of proposed remedial action comes into effect.
- (4) In subsection (1)(b) above “the relevant date”, in relation to a stop notice, means—
 - (a) the date on which the stop notice was given; or
 - (b) where one or more previous stop notices had been given in respect of the whole or any part of the damage, the date on which that notice or, as the case may be, the first of those notices was given.
- (5) The Secretary of State may by order substitute for the period mentioned in subsection (1)(b) above (whether as originally enacted or as previously amended under this subsection) such other period as he thinks fit.
- (6) On any occasion when in pursuance of subsection (2) above the Corporation consider whether to revoke a stop notice they shall give notice of their decision to the person to whom the stop notice was given as soon as they have made it.

Textual Amendments

F7 Words in s. 17(1)(a) repealed (31.10.1994) by 1994 c. 21, ss. 43, 67(8), Sch. 6 para. 3(1), **Sch. 11 Pt. II** (with ss. 40(7), 66); S.I. 1994/2553, **art. 2**

Changes to legislation: There are currently no known outstanding effects for the Coal Mining Subsidence Act 1991, Part II. (See end of Document for details)

Commencement Information

I17 S. 17 wholly in force at 30. 11. 1991 see s. 54(2) and S.I. 1991/2508, art. 2

18 Effect of further damage.

- (1) This section applies where—
 - (a) a damage notice has been given to the Corporation in respect of subsidence damage to any property (“the original damage”); and
 - (b) further subsidence damage to that property becomes evident in the circumstances mentioned in subsection (2) below.
- (2) The circumstances referred to in subsection (1)(b) above are that—
 - (a) the further damage becomes evident before the completion of remedial works or, in a case falling within section 8(4) above, before all sums in respect of which the Corporation are liable to make payments have been expended; and
 - (b) at the time when it becomes evident, the Corporation have neither elected under section 10 above, nor become liable under section 11(1) above, to make a depreciation payment in respect of the damaged property.
- (3) In any case to which this section applies the original damage and the further damage shall be treated as one (“the combined damage”) and, subject to subsection (5) below—
 - (a) a fresh damage notice shall be required if, and only if, before the further damage becomes evident, the Corporation have elected under section 8 above to make a payment in lieu under that section instead of executing any remedial works;
 - (b) any notice affecting the required remedial action in respect of the original damage given before the further damage becomes evident shall cease to have effect and this Part shall apply as if that notice had not been given;
 - (c) where a fresh damage notice is not required, a fresh notice of proposed remedial action relating to the combined damage shall be given by the Corporation to the claimant and any other person interested as soon as reasonably practicable after the further damage becomes evident;
 - (d) any schedule of remedial works relating to the original damage sent to the claimant or any other person interested before the further damage becomes evident shall not take effect or (as the case may be) shall cease to have effect;
 - (e) where a fresh schedule of remedial works relating to the combined damage satisfies the requirements of subsection (4) below—
 - (i) subsections (3) and (4) of section 6 above shall not apply; and
 - (ii) subsection (5)(a) of that section shall have effect as if for subparagraphs (i) and (ii) there were substituted a reference to the date on which the schedule is sent to the claimant or any other person interested;
 - (f) any stop notice given to any person with respect to the original damage shall have effect in relation to the combined damage as if there were specified in it as excepted works such works (if any) as may be specified in a notice given to that person by the Corporation; and
 - (g) the references to remedial works in section 8(8) and (10) above shall not include any remedial works begun before the further damage becomes evident.

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- (4) A fresh schedule of remedial works relating to the combined damage satisfies the requirements of this subsection if the aggregate amount of the costs specified in that schedule does not exceed, by more than 20 per cent., the aggregate amount of the costs specified in any schedule of remedial works to which subsection (3)(d) above applies.
- (5) It shall be the duty of the Corporation to specify in a notice under subsection (3)(f) above such works (if any) as are required in order to render the damaged property reasonably fit to be used for the purposes for which it was used immediately before the original damage became evident, not being—
 - (a) emergency works; or
 - (b) works the execution of which is not reasonably practicable in all the circumstances of the case.
- (6) In any case to which this section applies it may be agreed between the Corporation, the claimant and any other person interested—
 - (a) that paragraphs (a) to (e) of subsection (3) above shall not apply; and
 - (b) that any such notice or schedule as is mentioned in paragraph (b) or (d) of that subsection shall have effect in relation to the combined damage with such modifications as may be so agreed.
- (7) This section is without prejudice to any liability of the Corporation in respect of the cost of any works executed before the further damage becomes evident.
- (8) The Secretary of State may by order substitute for the percentage specified in subsection (4) above (whether as originally enacted or as previously amended under this subsection) such other percentage as he thinks fit.

Commencement Information

I18 S. 18 wholly in force at 30. 11. 1991 see s. 54(2) and S.I. 1991/2508, art. 2

Special cases

19 Ancient monuments and listed buildings.

- (1) This section applies where any property which—
 - (a) is for the time being included in the Schedule of monuments compiled and maintained under section 1 of the ^{M6}Ancient Monuments and Archaeological Areas Act 1979;
 - (b) has been notified to the Corporation by the Secretary of State as an ancient monument within the meaning of that Act for the time being under the care of the Secretary of State; or
 - (c) is a listed building within the meaning of section 1 of the ^{M7}Planning (Listed Buildings and Conservation Areas) Act 1990, or [^{F8}section 1 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997], and is not of a description specified in an order made by the Secretary of State,is affected by subsidence damage and the character of the property as one of historic, architectural, archaeological or other special interest is or may be affected by that damage.

Changes to legislation: There are currently no known outstanding effects for the Coal Mining Subsidence Act 1991, Part II. (See end of Document for details)

- (2) If and to the extent that it is reasonably practicable and in the public interest so to restore the property to its former condition as to maintain its character as one of special interest, this Part shall have effect in relation to the damage as if—
- (a) section 6(2)(a) above defined “remedial works” as such works as are necessary for the purpose of so restoring the property; and
 - (b) section 10 above were omitted.
- (3) Any question arising by virtue of subsection (2) above as to whether or how far it is reasonably practicable or in the public interest to restore any property as mentioned in that subsection shall be determined by the Secretary of State.
- (4) In this section “former condition”, in relation to any property, means a condition comparable to its condition immediately before the subsidence damage occurred.

Textual Amendments

F8 Words in s. 19(1)(c) substituted (27.5.1997) by 1997 c. 11, ss. 4, 6(2), **Sch. 2 para. 50**

Commencement Information

I19 S. 19 wholly in force at 30.11.1991 see s. 54(2) and S.I. 1991/2508, **art. 2**.

Marginal Citations

M6 1979 c. 46.

M7 1990 c. 9.

20 Ecclesiastical property etc.

- (1) In the case of subsidence damage to any ecclesiastical property—
- (a) the [^{F9}Diocesan Board of Finance for the diocese in which the land is situated] shall be entitled, in addition to any other person who is so entitled, to give a damage notice; and
 - (b) where any other such person is the claimant, the [^{F9}Diocesan Board of Finance for the diocese in which the land is situated] shall be treated as another person interested whether or not [^{F10}it gives] such a notice.
- (2) Any payment under section 10 or 11 above in respect of ecclesiastical property which would, apart from this subsection, fall to be made to the owner of the property—
- (a) shall be made to the [^{F9}Diocesan Board of Finance for the diocese in which the land is situated]; and
 - (b) shall be applied by [^{F11}it] 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.
- (3) Where, in relation to any property other than ecclesiastical property—
- (a) any payment under section 10 or 11 above would, apart from this subsection, fall to be made to a person whose interest in the property is held for religious purposes; and
 - (b) a request for payment is made to the Corporation by or on behalf of the representative body,
- the payment shall be made to that body.

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(4) In this section—

“ecclesiastical property” means property in England belonging to any ecclesiastical benefice^{F12} of the Church of England], or being or forming part of a church subject to the jurisdiction of a bishop of any diocese^{F12} of the Church of England] or the site of such a church, or being or forming part of a burial ground subject to such jurisdiction;

“the representative body”, in relation to property of any description held for religious purposes, means the body of persons (if any) which, in relation to that property or property of that description, has been notified to the Corporation by the Secretary of State, after consultation with such persons and organisations as he may think appropriate.

Textual Amendments

- F9** Words in s. 20 substituted (E.) (1.10.2006) by [Church of England \(Miscellaneous Provisions\) Measure 2006 \(No. 1\), s. 16\(2\), Sch. 5 para. 29\(1\)\(a\)](#); 2006 No. 2, Instrument made by Archbishops
- F10** Words in s. 20(1)(b) substituted (E.) (1.10.2006) by [Church of England \(Miscellaneous Provisions\) Measure 2006 \(No. 1\), s. 16\(2\), Sch. 5 para. 29\(1\)\(b\)](#); 2006 No. 2, Instrument made by Archbishops
- F11** Word in s. 20(2)(b) substituted (E.) (1.10.2006) by [Church of England \(Miscellaneous Provisions\) Measure 2006 \(No. 1\), s. 16\(2\), Sch. 5 para. 29\(1\)\(c\)](#); 2006 No. 2, Instrument made by Archbishops
- F12** Words in s. 20(4) inserted (E.) (1.10.2006) by [Church of England \(Miscellaneous Provisions\) Measure 2006 \(No. 1\), s. 16\(2\), Sch. 5 para. 29\(1\)\(d\)](#); 2006 No. 2, Instrument made by Archbishops

Commencement Information

- I20** S. 20 wholly in force at 30. 11. 1991 see s. 54(2) and [S.I. 1991/2508, art.2](#)

21 Property belonging to protected tenants.

- (1) Where property belonging to a protected tenant is affected by subsidence damage, Schedule 3 to this Act (which provides for the protected tenant to be treated, in certain circumstances, as a person liable to make good the damage in whole or in part) shall apply if, apart from the provisions of that Schedule, neither the protected tenant nor any other person would be liable to make good the damage in whole or in part.
- (2) For the purposes of this section and Schedule 3 to this Act, property affected by subsidence damage belongs to a protected tenant if he would have been entitled under any enactment contained in the relevant Act or Acts to remove the property, or to be paid compensation in respect of it by his landlord, if his tenancy had terminated immediately before the damage occurred.
- (3) In this section and Schedule 3 to this Act “protected tenant” means a person who is—
- (a) a tenant for the purposes of Part I of the ^{M8}Landlord and Tenant Act 1927, the ^{M9}Agricultural Holdings Act 1986 or the ^{M10}Agricultural Holdings (Scotland) Act 1949;
 - ^{F13}(aa) a tenant under a farm business tenancy within the meaning of the Agricultural Tenancies Act 1995;]
 - (b) a landholder for the purposes of the Small Landholders (Scotland) Acts 1886 to 1931; or
 - (c) a crofter for the purposes of the ^{M11}Crofters (Scotland) Act 1955;

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and references, in relation to a protected tenant, to the relevant Act or Acts shall be construed accordingly.

Textual Amendments

F13 S. 21(3)(aa) inserted (1.9.1995) by 1994 c. 21, ss. 40, 41(2), **Sch. para. 36** (with s. 37)

Commencement Information

I21 S. 21 wholly in force at 30.11.1991 see s. 54(2) and S.I. 1991/2508, **art. 2**

Marginal Citations

M8 1927 c. 36.

M9 1986 c. 5.

M10 1949 c. 75.

M11 1955 c. 21.

Changes to legislation:

There are currently no known outstanding effects for the Coal Mining Subsidence Act 1991, Part II.