



# Coal Mining Subsidence Act 1991

## 1991 CHAPTER 45

### PART III

#### ADDITIONAL REMEDIES

*Dwelling-houses rendered uninhabitable etc.*

#### **22 Home loss payments**

- (1) Where a dwelling-house is affected by subsidence damage, Schedule 4 to this Act (which confers on any person displaced from the dwelling-house a right, in certain circumstances, to receive a home loss payment) shall apply if the requirements of subsection (2) below are satisfied.
- (2) The requirements of this subsection are satisfied if—
  - (a) by reason of deterioration due to the subsidence damage in the condition of the dwelling-house, the dwelling-house cannot reasonably be rendered fit to be used as such; and
  - (b) the dwelling-house is not used as such by or with the authority of the person who immediately before the deterioration in its condition was entitled to possession of it.

#### **23 Relief for temporary dispossession**

- (1) Where a dwelling-house is affected by subsidence damage, Schedule 5 to this Act (which confers on any person temporarily dispossessed of the dwelling-house a right to certain relief) shall apply as respects any period during which the requirements of subsection (2) below are satisfied.
- (2) The requirements of this subsection are satisfied if—
  - (a) 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

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- (b) the dwelling-house is not used as such by or with the authority of the person who immediately before the deterioration in its condition was entitled to possession of it.

## **24 Care of vacant dwelling-houses**

- (1) Subject to subsection (2) below, where in the case of a dwelling-house which is affected by subsidence damage—
  - (a) the requirements of section 23(2) above are satisfied; and
  - (b) notice of that fact is given to the Corporation by the person who immediately before the deterioration in the condition of the dwelling-house was entitled to possession of it (“the occupier”),

this section shall apply in relation to the dwelling-house so long as those requirements continue to be satisfied.

- (2) This section shall cease to apply in relation to a dwelling-house, notwithstanding that the requirements of section 23(2) above continue to be satisfied, on the occurrence of any such event as is specified in paragraph 3(1) of Schedule 5 of this Act.
- (3) So long as this section applies in relation to a dwelling-house, the Corporation shall take reasonable steps for—
  - (a) preventing or minimising the risk of the house or its contents suffering loss or damage while it is unoccupied; and
  - (b) inspecting the house for the purpose of discovering whether any such loss or damage has occurred;

and the steps which it may be reasonable to take include, in particular, steps for keeping the dwelling-house weatherproof and secure against persons seeking to enter it as trespassers or, in Scotland, without lawful authority.

- (4) Where the Corporation request permission from the occupier to remove and place in storage at their own expense any of the contents of the dwelling-house, they shall not be liable by virtue of subsection (3) above for any loss or damage to any of those contents as respects which such permission is unreasonably refused.
- (5) Any claim arising out of a breach of the duty imposed by subsection (3) above shall be determined by the county court in England and Wales and by the sheriff in Scotland.
- (6) Nothing in this section shall affect any liability of the Corporation arising apart from this section.

## **25 Compensation for inconvenience etc. during works**

- (1) The Secretary of State may, after consultation with the Corporation, make regulations requiring the payment by the Corporation of compensation for any inconvenience or disturbance which may be caused, as a result of the execution by the Corporation of remedial works, to persons residing in dwelling-houses affected by subsidence damage.
- (2) Regulations under this section may make provision with respect to—
  - (a) the making of claims for compensation under the regulations;
  - (b) the descriptions of persons who may make a claim for such compensation;
  - (c) the matters in respect of which, and any circumstances in which, such compensation is or is not to be payable; and

- (d) the sums, or the method of determining the sums, payable by way of such compensation.

*Agricultural losses*

**26 Farm loss payments**

Where land constituting or included in an agricultural unit is affected by subsidence damage, Schedule 6 to this Act (which confers on any occupier displaced from the land a right, in certain circumstances, to receive a farm loss payment) shall apply if, by reason of deterioration due to the damage in the condition of the land, the land cannot profitably be used for agricultural purposes.

**27 Crop loss payments**

- (1) Where at any time land constituting or included in an agricultural unit is affected by subsidence damage, this section shall apply as respects the period beginning with that time and ending with the discharge by the Corporation of their remedial obligation with respect to the damage.
- (2) For each year or part of a year falling within that period, the Corporation shall be under an obligation to make to the occupier of the unit a payment of the amount (if any) given by the formula—

$$P = R - S + E$$

where—

P is the amount payable under this subsection;

R is any amount by which the occupier's return from crops sown or planted in that year or part of a year is less than it might reasonably have been expected to have been if the subsidence damage had not occurred;

S is any amount by which his expenses in respect of crops so sown or planted are less than they might reasonably have been expected to have been if the damage had not occurred;

E is the amount of any expenses incurred by him in that year or part of a year in taking reasonable steps to protect crops grown in a greenhouse affected by the damage.

- (3) For each year or part of a year falling within the period mentioned in subsection (1) above, the Corporation shall be under an obligation to make to the occupier of the unit a payment of the amount (if any) given by the formula—

$$P = R - S$$

where—

P is the amount payable under this subsection;

R is any amount by which the occupier's yield from land used for pasture in that year or part of a year is less than it might reasonably have been expected to have been if the subsidence damage had not occurred;

S is any amount by which his expenses in respect of land used for pasture are less than they might reasonably have been expected to have been if the damage had not occurred.

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- (4) There shall be disregarded for the purposes of subsection (2) above—
- (a) any crops which would normally have been harvested before the subsidence damage became evident;
  - (b) any crops which were or would have been sown or planted after an election by the Corporation under section 10 above to make a depreciation payment in respect of the damage; and
  - (c) if all reasonable steps have not been taken to protect them, any crops grown in a greenhouse affected by the damage;
- and there shall be disregarded for the purposes of subsection (3) above any use of land for pasture which was or would have been so used after such an election as is mentioned in paragraph (b) above.
- (5) The Corporation shall not be liable to make a payment under this section except on a claim made by the person entitled to it within the period of twelve months beginning with the end of the year or part of a year to which the payment relates.
- (6) Where a claim is made under subsection (5) above, the Corporation may, by notice given to any person who is entitled to give a damage notice in respect of the subsidence damage, elect to treat that claim as if it were also such a notice given by that person in respect of that damage.
- (7) A payment under this section shall carry interest at the applicable rate (if any) from the end of the period mentioned in subsection (5) above until payment.
- (8) In this section—
- “greenhouse” includes any building or structure designed to afford protection from the weather or to secure the retention of heat;
- “year” means a calendar year;
- and in relation to any agricultural activity carried on on land constituting or included in an agricultural unit, the person having the right to carry it on shall be treated as the occupier of that unit.

## 28 Payments for tenant farmers

- (1) Where the Corporation make a depreciation payment to the owner of any agricultural land which is subject to a tenancy, they shall also make to the tenant a payment of the amount given by the formula—

$$P = (C + S) \times \frac{D}{V}$$

where—

- P is the amount payable under this subsection;
- C is the compensation which, on the assumptions mentioned in subsection (3) below, would have been payable to the tenant for the value of his unexpired term or interest in the land;
- S is the sum which, on those assumptions, would have been payable to the tenant under section 12 of the Agriculture (Miscellaneous Provisions) Act 1968 (additional payments on compulsory acquisition of agricultural holdings);
- D is the amount of the depreciation payment made to the owner of the land;

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V is what would have been the value of the land at the relevant time if it had not been affected by the subsidence damage.

- (2) Where the Corporation make a payment under subsection (1) above to a tenant who has been displaced from the whole or a sufficient part of the land affected by the subsidence damage, they shall also make to him a payment equal to the compensation which—
  - (a) on the assumptions mentioned in subsection (3) below; and
  - (b) on the further assumption that the displacement had been caused by the compulsory acquisition mentioned in paragraph (a) of that subsection,would have been payable to him for any loss or injury sustained by him.
- (3) The assumptions referred to in subsections (1) and (2) above are—
  - (a) that the land had been compulsorily acquired at the relevant time;
  - (b) that the tenant had no greater interest in the land than as tenant for a year or from year to year; and
  - (c) that the land had not been affected by the subsidence damage.
- (4) Paragraph 2 of Schedule 1 to this Act shall apply for the purpose of determining the value mentioned in subsection (1) above as it applies for the purpose of determining the value of a unit of property at any time for the purposes of section 10 or 11 above; and paragraph 4 of that Schedule (interest on depreciation payments) shall apply in relation to any payment under this section as if—
  - (a) the payment were a depreciation payment; and
  - (b) the relevant time in relation to the payment were the time immediately after the making of the claim.
- (5) In this section—

“the relevant time” means the relevant time for the purposes of paragraph 3 of Schedule 1 to this Act;

“sufficient part” means not less than 0.5 hectares or such area as the Secretary of State may by order specify;

and any reference to compensation is a reference to compensation under section 20 of the Compulsory Purchase Act 1965 or section 114 of the Lands Clauses Consolidation (Scotland) Act 1845 (compensation to be made to tenants for a year etc.).

### *Miscellaneous*

## **29 Purchase etc. of property affected by blight**

- (1) The Secretary of State may, after consultation with the Corporation, make regulations with respect to the action to be taken by the Corporation for alleviating cases of hardship suffered as a result of property being blighted by subsidence damage or the possibility of such damage.
- (2) The action which may be required by the regulations is—
  - (a) the purchase of any blighted property at a price equivalent to its unblighted value; or
  - (b) the payment of an amount equivalent to the difference between the value of any such property and its unblighted value.
- (3) Regulations under this section may make provision as to—

- (a) the making of claims under the regulations and the descriptions of persons who may make them;
  - (b) the descriptions of property in respect of which such claims may be made and the circumstances in which such property is to be regarded as blighted for the purposes of the regulations;
  - (c) the circumstances in which action is or is not required to be taken (including the circumstances in which a person is to be regarded as suffering hardship);
  - (d) the determination of the value or unblighted value of any blighted property.
- (4) In this section “unblighted value”, in relation to any blighted property, means the value which it would have if it were not blighted.

### **30 Compensation for consequential losses of small firms**

- (1) Where at any time any property—
- (a) which is used wholly or partly for the purposes of a small firm; and
  - (b) as respects which one or more notices have been or should have been given by the Corporation under section 46(1) below,
- is affected by subsidence damage, this section shall apply as respects the period beginning with that time and ending with the discharge by the Corporation of their remedial obligation with respect to the damage.
- (2) For each year or part of a year—
- (a) which falls within that period; and
  - (b) in which any consequential loss resulting from the damage is suffered by the firm,
- the Corporation shall be under an obligation to make to the firm a payment of such amount as would have been payable to the firm by way of damages in respect of that loss if the damage had been attributable to the negligence of the Corporation; and in determining the amount (if any) of such a payment regard shall be had to the rules of law relating to remoteness and the mitigation of losses.
- (3) The Corporation shall not be liable to make a payment under this section unless, as soon as reasonably practicable after the first time—
- (a) when the firm suffers any consequential loss resulting from the damage; or
  - (b) if later, when the firm has such knowledge as is mentioned in subsection (4) (read with subsection (5)) of section 3 above,
- the firm gives notice of the loss to the Corporation.
- (4) Where a notice is given under subsection (3) above, the Corporation may, by notice given to any person who is entitled to give a damage notice in respect of the subsidence damage, elect to treat the notice under that subsection as if it were also a damage notice given by that person in respect of that damage.
- (5) The Corporation shall not be liable to make a payment under this section except on a claim made by the firm within the period of twelve months beginning with the end of the year or part of a year to which the payment relates.
- (6) A payment under this section shall carry interest at the applicable rate (if any) from the end of the period mentioned in subsection (5) above until payment.
- (7) In this section—

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“associated employer” shall be construed in accordance with section 153(4) of the Employment Protection (Consolidation) Act 1978;

“consequential loss” does not include—

- (a) any loss for which provision is made by section 27(2) or (3) above; or
- (b) any loss resulting from subsidence damage as respects which the Corporation’s remedial obligation is excluded by section 33(3) or 34(4) or (7) below;

“employee” has the meaning given by section 153(1) of the Employment Protection (Consolidation) Act 1978;

“small firm” means any person who, at the time when the property is affected by subsidence damage, is carrying on a business and satisfies the requirements of subsection (8) below;

“year” means a calendar year.

- (8) A person satisfies the requirements of this subsection at any time if, at that time, the number of employees employed by him, added to the number of employees employed by any associated employer of his, does not exceed 20.
- (9) The Secretary of State may by order substitute for the number of employees specified in subsection (8) above (whether as originally enacted or as previously amended under this subsection) such other number of employees as he thinks fit.

### **31 Compensation for damage to moveable property**

- (1) Where damage is caused to any moveable property by the happening of subsidence damage, the Corporation shall be liable to pay to any person having an interest in the property such amount by way of compensation as would have been payable to that person by way of damages if—
  - (a) the damage to the moveable property had been attributable to the negligence of the Corporation; and
  - (b) subject to subsection (2) below, liability for any consequential loss resulting from the damage were excluded.
- (2) Subsection (1)(b) above shall not apply to a claim made by a small firm where—
  - (a) the moveable property was used wholly or partly for the purposes of the firm; and
  - (b) the property affected by subsidence damage was property as respects which one or more notices had been or should have been given by the Corporation under section 46(1) below;and in determining the amount (if any) of so much of a payment as is payable by virtue of this subsection regard shall be had to the rules of law relating to remoteness and the mitigation of losses.
- (3) The Corporation shall not be liable under this section to pay compensation to any person in respect of damage to any moveable property where—
  - (a) at the time when it was damaged, the property was on any land in circumstances such that its presence constituted a trespass to that land or, in Scotland, was on any land without lawful authority; or
  - (b) the damage was wholly attributable to the fault of that person or any person in lawful possession of the property;

and if the damage was partly attributable to the fault of that person or any person in lawful possession of the property, the liability of the Corporation shall be reduced proportionately.

(4) In this section—

“fault” includes any act or omission which would, if the damage to the moveable property had been caused by the negligence of the Corporation, have constituted fault for the purposes of the Law Reform (Contributory Negligence) Act 1945;

“moveable property” means—

(a) in relation to England and Wales, any chattel personal other than a thing in action or money;

(b) in relation to Scotland, any corporeal moveable other than money;

“small firm” has the meaning which would be given by section (30)(7) above if the reference to the time when the property is affected by subsidence damage were a reference to the time when damage is caused to the moveable property.

## **32 Compensation for death or disablement**

(1) This section applies where—

- (a) as the result of an injury caused by the happening of subsidence damage, any person dies or is disabled (whether permanently or temporarily); and
- (b) apart from this section, no action to recover damages is maintainable in respect of the death or disablement.

(2) Subject to subsection (4) below, the Corporation shall be liable, 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—

- (a) the death had been attributable to the negligence of the Corporation; and
- (b) the persons by or on behalf of whom an action could have been brought against the Corporation 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
- (c) the damages were claimed under the Fatal Accidents Act 1976 where the death resulted from an injury caused in England or Wales, or the Damages (Scotland) Act 1976 where the death resulted from an injury caused in Scotland.

(3) Subject to subsection (4) below, the Corporation shall be liable, in a case of disablement, to pay the like damages, recoverable in the like manner and within the like time, as would have been payable if the disablement had been attributable to the negligence of the Corporation.

(4) No liability shall attach to the Corporation under subsection (2) or (3) above 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 on any land as a trespasser or, in Scotland, without lawful authority; or
- (b) the injury was wholly attributable to the fault of that person;

and if the injury was partly attributable to the fault of that person the liability of the Corporation under that subsection shall be reduced proportionately.



- (5) In this section “fault” includes any act or omission which would, if the death or disablement had been caused by the negligence of the Corporation, have constituted fault for the purposes of the Law Reform (Contributory Negligence) Act 1945.