



Coal Mining Subsidence Act 1991

1991 CHAPTER 45

PART IV

PREVENTIVE AND OTHER MEASURES

36 Land drainage systems. **E+W**

- (1) Subject to subsections (2) to (4) below, the Corporation shall, in any area in England and Wales outside the Doncaster Drainage Area, from time to time carry out—
- to the reasonable satisfaction of the appropriate drainage authority; and
 - in accordance with such arrangements as to timing as may be agreed or determined,

such measures (if any) for remedying, mitigating or preventing any deterioration in a land drainage system, by reason of subsidence damage which has occurred or appears likely to occur, as may be reasonably required by the appropriate drainage authority.

- (2) The Corporation may elect, in respect of any such measures, not to carry out the measures themselves but to make to the appropriate drainage authority—
- a payment equal to the cost reasonably incurred by the authority in carrying out the measures; or
 - if the authority propose to merge the carrying out of the measures with the execution of other works, payments equal to any sums from time to time shown to have been expended by the authority in carrying out the merged operations up to the appropriate amount;

and in this subsection “the appropriate amount” means such aggregate amount as may be agreed or determined to be reasonable in all the circumstances, having regard to the expenditure which would have been incurred by the Corporation or by the authority in carrying out the measures.

- (3) The Corporation—
- in a case where the measures fall to be carried out in connection with property comprised in a main river, shall make the appropriate election under subsection (2) above; and

Status: There are multiple versions of this provision on screen. These apply to different geographical extents. Skip to: E+W - England and Wales extent S - Scotland extent

Changes to legislation: Coal Mining Subsidence Act 1991, Section 36 is up to date with all changes known to be in force on or before 19 October 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (b) in any other case, shall not unreasonably refuse any request to make that election received from the appropriate drainage authority;
- but the Corporation shall not be deemed to act unreasonably in refusing any such request received after the Corporation have begun to carry out the measures.
- (4) Notwithstanding anything in subsections (1) to (3) above, in any case where it is agreed or determined to be appropriate, the liability of the Corporation for the cost of any recurring measures may be discharged by a lump sum payment agreed or determined to represent the capital amount of that cost.
- (5) Section 16 above (except subsections (6) to (8)) shall apply in any case where—
- (a) a damage notice has been given to the Corporation in respect of any property; and
 - (b) the Corporation are of the opinion with respect to all or any of the permanent works which would otherwise fall to be executed in connection with the property that—
 - (i) the necessity for those works; or
 - (ii) the nature or manner of their execution,
 is likely to be so affected by operations under this section, or under Part II of the ^{M1}Doncaster Area Drainage Act 1929, as to make it unreasonable that those works should be executed for the time being;
- and in its application to any stop notice given by virtue of this subsection, section 17(1) above shall have effect as if it referred to the Corporation no longer being of such opinion as is mentioned in paragraph (b) above.
- (6) The Corporation shall, for the purpose of carrying out any measures under this section, have the like powers—
- (a) of surveying and entering on any land; and
 - (b) of doing anything on land entered by them,
- as are conferred on the appropriate drainage authority by the enactments relating to land drainage; but nothing in this subsection shall apply in relation to any land occupied by or on behalf of the Crown.
- (7) Regulations made by the Secretary of State and the Minister of Agriculture, Fisheries and Food acting jointly may make provision—
- (a) with respect to the procedure to be followed by the Corporation and by the appropriate drainage authority in giving effect to the provisions of this section; and
 - (b) for the determination of questions arising under this section between the Corporation and the authority.
- (8) In this section—
- “agreed or determined” means agreed between the Corporation and the appropriate drainage authority or, in default of such agreement, determined in the manner provided by regulations under this section;
- “the appropriate drainage authority” means—
- (a) in a case where the measures would fall to be carried out either in connection with a main river, or outside any internal drainage district^{F1}—
 - (i) in relation to measures to be carried out wholly in England, the Environment Agency;

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- (ii) in relation to measures to be carried out wholly in Wales, the Natural Resources Body for Wales;
 - (iii) in relation to measures to be carried out partly in England and partly in Wales, either of those bodies;]
- (b) in any other case, the internal drainage board in whose district the measures would fall to be carried out;
- “the Doncaster Drainage Area” has the same meaning as in the Doncaster Area Drainage Act 1929;
- “land drainage system” means a drainage system maintainable by a drainage authority;
- “main river” means a main river for the purposes of [F2Part IV of the Water Resources Act 1991].

Extent Information

- E1** This version of this provision extends to England and Wales only; a separate version has been created for Scotland only

Textual Amendments

- F1** Words in s. 36(8) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(No. 755\)](#), [art. 1\(2\)](#), [Sch. 2 para. 220](#) (with [Sch. 7](#))
- F2** Words in s. 36(8) substituted (E.W.) (01.12.1991) by [Water Consolidation \(Consequential Provisions\) Act 1991 \(c. 60, SIF 130\)](#), [ss. 2\(1\), 4\(2\)](#), [Sch. 1 para. 59](#).

Modifications etc. (not altering text)

- C1** S. 36 modified (31.10.1994) by [1994 c. 21, s. 43](#), [Sch. 6 para. 6](#) (with [ss. 40\(7\), 66](#)); [S.I. 1996/2553](#), [art. 2](#)

Commencement Information

- I2** S. 36 wholly in force (E.W.) at 30.11.1991 see [s. 54\(2\)](#) and [S.I. 1991/2508](#), [art. 2](#).

Marginal Citations

- M1** [1929 c. xvii](#).

36 Land drainage systems. **S**

- (1) Subject to subsections (2) to (4) below, the Corporation shall, in any area in England and Wales outside the Doncaster Drainage Area, from time to time carry out—
- (a) to the reasonable satisfaction of the appropriate drainage authority; and
 - (b) in accordance with such arrangements as to timing as may be agreed or determined,
- such measures (if any) for remedying, mitigating or preventing any deterioration in a land drainage system, by reason of subsidence damage which has occurred or appears likely to occur, as may be reasonably required by the appropriate drainage authority.
- (2) The Corporation may elect, in respect of any such measures, not to carry out the measures themselves but to make to the appropriate drainage authority—
- (a) a payment equal to the cost reasonably incurred by the authority in carrying out the measures; or

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- (b) if the authority propose to merge the carrying out of the measures with the execution of other works, payments equal to any sums from time to time shown to have been expended by the authority in carrying out the merged operations up to the appropriate amount;
- and in this subsection “the appropriate amount” means such aggregate amount as may be agreed or determined to be reasonable in all the circumstances, having regard to the expenditure which would have been incurred by the Corporation or by the authority in carrying out the measures.
- (3) The Corporation—
- (a) in a case where the measures fall to be carried out in connection with property comprised in a main river, shall make the appropriate election under subsection (2) above; and
- (b) in any other case, shall not unreasonably refuse any request to make that election received from the appropriate drainage authority;
- but the Corporation shall not be deemed to act unreasonably in refusing any such request received after the Corporation have begun to carry out the measures.
- (4) Notwithstanding anything in subsections (1) to (3) above, in any case where it is agreed or determined to be appropriate, the liability of the Corporation for the cost of any recurring measures may be discharged by a lump sum payment agreed or determined to represent the capital amount of that cost.
- (5) Section 16 above (except subsections (6) to (8)) shall apply in any case where—
- (a) a damage notice has been given to the Corporation in respect of any property; and
- (b) the Corporation are of the opinion with respect to all or any of the permanent works which would otherwise fall to be executed in connection with the property that—
- (i) the necessity for those works; or
- (ii) the nature or manner of their execution,
- is likely to be so affected by operations under this section, or under Part II of the ^{M2}Doncaster Area Drainage Act 1929, as to make it unreasonable that those works should be executed for the time being;
- and in its application to any stop notice given by virtue of this subsection, section 17(1) above shall have effect as if it referred to the Corporation no longer being of such opinion as is mentioned in paragraph (b) above.
- (6) The Corporation shall, for the purpose of carrying out any measures under this section, have the like powers—
- (a) of surveying and entering on any land; and
- (b) of doing anything on land entered by them,
- as are conferred on the appropriate drainage authority by the enactments relating to land drainage; but nothing in this subsection shall apply in relation to any land occupied by or on behalf of the Crown.
- (7) Regulations made by the Secretary of State and the Minister of Agriculture, Fisheries and Food acting jointly may make provision—
- (a) with respect to the procedure to be followed by the Corporation and by the appropriate drainage authority in giving effect to the provisions of this section; and

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- (b) for the determination of questions arising under this section between the Corporation and the authority.

(8) In this section—

“agreed or determined” means agreed between the Corporation and the appropriate drainage authority or, in default of such agreement, determined in the manner provided by regulations under this section;

“the appropriate drainage authority” means—

- (a) in a case where the measures would fall to be carried out either in connection with a main river, or outside any internal drainage district^{F1}—
- (i) in relation to measures to be carried out wholly in England, the Environment Agency;
 - (ii) in relation to measures to be carried out wholly in Wales, the Natural Resources Body for Wales;
 - (iii) in relation to measures to be carried out partly in England and partly in Wales, either of those bodies;
- (b) in any other case, the internal drainage board in whose district the measures would fall to be carried out;

“the Doncaster Drainage Area” has the same meaning as in the Doncaster Area Drainage Act 1929;

“land drainage system” means a drainage system maintainable by a drainage authority;

“main river” means a main river for the purposes of the ^{M3}Land Drainage Act 1976.

Extent Information

- E2** This version of this provision extends to Scotland only; a separate version has been created for England and Wales only.

Textual Amendments

- F1** Words in s. 36(8) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(No. 755\)](#), [art. 1\(2\)](#), [Sch. 2 para. 220](#) (with [Sch. 7](#))

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Commencement Information

- I3** S. 36 wholly in force (S.) at 30. 11. 1991 see [s. 54\(2\)](#) and [S.I. 1991/2508](#), [art.2](#)

Marginal Citations

- M2** [1929 c. xvii](#).
M3 [1976 c. 70](#).

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 19(1A) inserted by [2023 asc 3 Sch. 13 para. 162](#)