

*Status: Point in time view as at 01/02/1991.*

*Changes to legislation: There are currently no known outstanding effects for the Coal-Mining (Subsidence) Act 1957 (repealed 30.11.1991), FIRST SCHEDULE. (See end of Document for details)*

## SCHEDULES

### FIRST SCHEDULE

Sections 1, 4.

#### PROVISIONS AS TO DWELLING-HOUSES RENDERED UNINHABITABLE

- 1 Where a dwelling-house is affected by subsidence damage occurring after the passing of this Act, the provisions of this Schedule shall have effect as respects any period (in this Schedule referred to as “the period of dispossession”) during which both the following conditions are satisfied, that is to say—
- (a) that 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
  - (b) that the dwelling-house is not used as such by or with the authority of the person who immediately before the occurrence of the subsidence damage was entitled to possession thereof (hereinafter in this Schedule referred to as “the occupier”).
- 2 (1) Subject to the provisions of this Schedule, in the case of any person ordinarily resident in the dwelling-house during the period immediately preceding the occurrence of the subsidence damage (hereinafter in this Schedule referred to as a “resident”) the [<sup>F1</sup>Corporation] shall so long as the period of dispossession lasts be under an obligation at all times—
- (a) to make available alternative living accommodation which—
    - (i) is of a standard comparable to the general standard of the housing accommodation under the management of [<sup>F2</sup>the local housing authority within the meaning of the Housing Act 1985], or, as the case may be [<sup>F3</sup>the local authority], for the purposes of [<sup>F4</sup>[<sup>F5</sup>Part VII][<sup>F5</sup>Part I] of the <sup>M1</sup>Housing (Scotland) Act [<sup>F5</sup>1966][<sup>F5</sup>1987]], for the area in which the dwelling-house is situated; and
    - (ii) is otherwise reasonable having regard to all the circumstances, including the probable duration of the period of dispossession; or
  - (b) as respects any of the first thirty days of the period of dispossession during which such alternative living accommodation as aforesaid is not made available, to pay to the resident in question the amount, if any, by which the aggregate expenditure reasonably incurred by him by way of rent, rates, food, living accommodation, heating, light and other household expenses exceeds what it would have been if the subsidence damage had not occurred and he had continued to reside in the dwelling-house; or
  - (c) as respects any other part of the period of dispossession during which such alternative living accommodation as aforesaid is not made available, to pay to the resident in question the amount aforesaid or the amount which would

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be payable by way of rent for accommodation equivalent to such alternative living accommodation as aforesaid whichever amount is the less:

Provided that the [F1Corporation] shall not be under any obligation under this sub-paragraph in respect of any part of the period of dispossession during which, irrespective of the subsidence damage, the resident in question would not have been residing at the dwelling-house.

- (2) Where the [F1Corporation] are under an obligation towards a resident by virtue of the foregoing sub-paragraph, the [F1Corporation] shall also be under an obligation with respect to the contents of the dwelling-house to provide, or to pay to that resident any expenditure reasonably incurred by him in providing, for any removal or storage thereof reasonably required during the period of dispossession as a result of the subsidence damage and any removal thereof reasonably required as a result of the termination of the [F1Corporation]'s obligations towards that resident under the foregoing sub-paragraph:

Provided that the [F1Corporation] shall not be under any obligation under this sub-paragraph in respect of the contents of any part of the dwelling-house which, immediately before the occurrence of the subsidence damage, was not used for the purposes of a private dwelling and the said obligations shall not extend to storage in or removal to any place outside Great Britain.

- (3) Subject to the provisions of sub-paragraph (2) of paragraph 4 of this Schedule, and without prejudice to their liability under the two foregoing sub-paragraphs in respect of any part of the period of dispossession falling before the making of their election, the [F1Corporation] may elect which of the courses open to them under the two foregoing sub-paragraphs they will for the time being adopt in any particular case.

#### Textual Amendments

- F1** Word substituted by [Coal Industry Act 1987 \(c. 3, SIF 86\)](#), s. 1(1)(2), **Sch. 1 para. 5(b)**
- F2** Words substituted by virtue of [Housing \(Consequential Provisions\) Act 1985 \(c. 71, SIF 61\)](#), s. 4, **Sch. 2 para. 2(3)(a)**
- F3** Words inserted by [Housing \(Consequential Provisions\) Act 1985 \(c. 71, SIF 61\)](#), s. 4, **Sch. 2 para. 2(3)(a)**
- F4** Words substituted by virtue of [Housing \(Scotland\) Act 1966 \(c. 49\)](#), s. **212(5)**
- F5** [Sch. 1 \(2\)\(1\)\(a\)](#) in para 2(1)(a) for the words “Part VII” and “1966” there are substituted (S.) the words “Part I” and “1987” respectively by [Housing \(Scotland\) Act 1987 \(c. 26, SIF 61\)](#), s. 339, **Sch. 23 para. 7(3)**

#### Marginal Citations

- M1** [1966 c. 49](#).

- 3 (1) Subject to the two following sub-paragraphs, the obligations of the [F6Corporation] towards any resident under sub-paragraph (1) of the last foregoing paragraph shall cease, notwithstanding that the period of dispossession has not expired—
- (a) if the occupier has ceased (otherwise than by reason of his death) to be entitled to possession of, or, as the case may be, of the site of, the dwelling-house; or

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- (b) on the expiration of a period of six months from the service by the [F6Corporation] on the resident in question of notice in writing of the opinion of the [F6Corporation] that the period of dispossession will continue indefinitely or that the said period will be unreasonably long or that the resident in question will not resume residence at or on the site of the dwelling-house at the expiration of that period.
- (2) Where a damage notice has been served in respect of the dwelling-house, the [F6Corporation] shall not be entitled to serve a notice under sub-paragraph (b) of the foregoing sub-paragraph on the grounds that the period of dispossession will continue indefinitely or will be unreasonably long—
- (a) unless the [F6Corporation] have elected to make a payment in respect of the dwelling-house under subsection (3) or subsection (4) of section one of this Act; or
- (b) while a notice under subsection (2) of section three of this Act is in force with respect to the dwelling-house.
- (3) Any person upon whom a notice under the said paragraph (b) is served may apply to the county court or, where the dwelling-house is situated in Scotland, to the sheriff, and the court or sheriff, if satisfied that there are not reasonable grounds for the opinion of the [F6Corporation], may declare the notice to be of no effect.

#### Textual Amendments

**F6** Word substituted by [Coal Industry Act 1987 \(c. 3, SIF 86\)](#), s. 1(1)(2), [Sch. 1 para. 5\(b\)](#)

- 4 (1) The [F7Corporation] shall not be under any obligation by virtue of paragraph 2 of this Schedule unless either the owner or the occupier of the dwelling-house is a resident and has given to the notice in writing, in such a manner, within such time and containing such particulars as may be prescribed, that in his opinion the condition specified in sub-paragraph (a) of paragraph 1 of this Schedule is satisfied, and has afforded the [F7Corporation] reasonable facilities to inspect the dwelling-house so far as he was in a position to afford such facilities.
- (2) As soon as reasonably practicable after receiving from any person a notice under the foregoing sub-paragraph, the [F7Corporation] shall give to that person notice in writing as to whether or not they agree with that person's opinion and, if they so agree, as to the manner in which they propose to discharge their obligations under paragraph 2 of this Schedule, and where in the circumstances of any particular case it appears to the [F7Corporation] appropriate so to do they may serve a separate notice such as aforesaid on any other resident; and where they have so given notice to any resident of an intention to adopt in his case the alternative set out in paragraph (a) or paragraph (c) of sub-paragraph (1) of the said paragraph 2, they shall not adopt in his case the other of those alternatives without his consent, which shall not be unreasonably withheld.

#### Textual Amendments

**F7** Word substituted by [Coal Industry Act 1987 \(c. 3, SIF 86\)](#), s. 1(1)(2), [Sch. 1 para. 5\(b\)](#)

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- 5 (1) Where, in pursuance of paragraph (a) of sub-paragraph (1) of paragraph 2 of this Schedule, the [<sup>F8</sup>Corporation] have made alternative living accommodation available to a resident, the following provisions of this paragraph shall apply.
- (2) The [<sup>F8</sup>Corporation] shall be entitled to possession of the accommodation so made available—
- (a) in a case falling within paragraph (b) of sub-paragraph (1) of paragraph 3 of this Schedule, at the expiration of the period of six months mentioned in the said paragraph (b);
  - (b) without prejudice to any obligations of the [<sup>F8</sup>Corporation] under the said paragraph 2 or to the provisions of sub-paragraph (2) of the last foregoing paragraph, at any time not less than one week after the [<sup>F8</sup>Corporation] have served notice in writing on the resident in question of their intention to take possession;

and where notice is given under paragraph (b) of this sub-paragraph, the said obligations shall continue until the expiration of the said week or such longer period as may be specified in the notice notwithstanding that the period of dispossession may have expired.

- (3) The [<sup>F8</sup>Corporation] shall be entitled to recover as a civil debt from the resident in question any amount by which the aggregate expenditure incurred by him by way of rent and rates is less than it would have been if the subsidence damage had not occurred and he had continued to reside in the dwelling-house, reduced by any amount by which that resident shows that the aggregate expenditure reasonably incurred by him by way of food, living accommodation (other than rent or rates), heating, light and other household expenses is greater than it would have been in the circumstances aforesaid:

Provided that the [<sup>F8</sup>Corporation] shall not be entitled to recover any amount under this sub-paragraph in excess of the amount which would have been payable by way of rent for the alternative living accommodation if it had been provided by [<sup>F9</sup>the local housing authority within the meaning of the Housing Act 1985 or the local authority] for the purposes of [<sup>F10</sup>Part VII of the <sup>M2</sup>Housing (Scotland) Act [<sup>F11</sup>1966][<sup>F11</sup>1987]], for the area in which the dwelling-house is situated.

#### Textual Amendments

- F8** Word substituted by [Coal Industry Act 1987 \(c. 3, SIF 86\), s. 1\(1\)\(2\), Sch. 1 para. 5\(b\)](#)
- F9** Words substituted by virtue of [Housing \(Consequential Provisions\) Act 1985 \(c. 71, SIF 61\), s. 4, Sch. 2 para. 2\(3\)\(b\)](#)
- F10** Words substituted by virtue of [Housing \(Scotland\) Act 1966 \(c. 49\), s. 212\(5\)](#)
- F11** [Sch.1 para. 5\(3\)](#) in the proviso, for the words “1966” there is substituted (S.) the words “1987” by [Housing \(Scotland\) Act 1987 \(c. 26, SIF 61\), s. 339, Sch. 23 para. 7\(4\)](#)

#### Marginal Citations

- M2** [1966 c. 49.](#)

- 6 Where no damage notice has been served in respect of the dwelling-house or where the [<sup>F12</sup>Corporation] have elected to make a payment under subsection (3) or subsection (4) of section one of this Act, then, during any period while the

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[<sup>F12</sup>Corporation]are under an obligation by virtue of sub-paragraph (1) of paragraph 2 of this Schedule, they may exercise in the name of the occupier any right with respect to the repair of the dwelling-house exercisable by the occupier against any person other than the [<sup>F12</sup>Corporation].

**Textual Amendments**

**F12** Word substituted by [Coal Industry Act 1987 \(c. 3, SIF 86\)](#), s. 1(1)(2), [Sch. 1 para. 5\(b\)](#)

- 7 Where the [<sup>F13</sup>Corporation]have elected to make a payment in respect of the dwelling-house under paragraph (b) of subsection (3) of section one of this Act, the [<sup>F13</sup>Corporation]shall be entitled to recover as a civil debt from the owner of the dwelling-house any amount by which the expenditure of the [<sup>F13</sup>Corporation]under this Schedule in connection with the dwelling-house exceeds what it would have been if only remedial works had been executed.

**Textual Amendments**

**F13** Word substituted by [Coal Industry Act 1987 \(c. 3, SIF 86\)](#), s. 1(1)(2), [Sch. 1 para. 5\(b\)](#)

- 8 Where a person entitled to serve a notice under paragraph 4 of this Schedule also has a right apart from this Act to claim from the [<sup>F14</sup>Corporation]or any other person compensation or damage in respect of any of the matters dealt with by this Schedule, he shall not be entitled to relief in respect of the same matters both under this Schedule and under that other right.

**Textual Amendments**

**F14** Word substituted by [Coal Industry Act 1987 \(c. 3, SIF 86\)](#), s. 1(1)(2), [Sch. 1 para. 5\(b\)](#)

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