
STATUTORY INSTRUMENTS

1994 No. 2563

COAL INDUSTRY

**The Coal Mining Subsidence
(Subsidence Adviser) Regulations 1994**

<i>Made</i>	- - - -	<i>3rd October 1994</i>
<i>Laid before Parliament</i>		<i>6th October 1994</i>
<i>Coming into force</i>	- -	<i>31st October 1994</i>

The Secretary of State, in exercise of the powers conferred on him by section 46(1), (2), (3), (5), (6) and (7) of the Coal Industry Act 1994⁽¹⁾ and section 50 of the Coal Mining Subsidence Act 1991⁽²⁾, and of all other powers enabling him in that behalf, hereby makes the following Regulations:—

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Coal Mining Subsidence (Subsidence Adviser) Regulations 1994 and shall come into force on 31st October 1994.

(2) In these Regulations—

“the 1991 Act” means the Coal Mining Subsidence Act 1991;

“the 1994 Act” means the Coal Industry Act 1994;

“complainant” means a person, other than a responsible person, by or on whose behalf a complaint of a kind to which regulation 4 applies has been made;

“financial year” means the period of 12 months commencing on 1st April;

“Lands Tribunal” means, in relation to Scotland, the Lands Tribunal for Scotland;

“notify” means notify in writing;

“responsible person” means a person with responsibility for subsidence affecting land⁽³⁾;

“the Subsidence Adviser” means the person for the time being appointed under regulation 2;

“subsidence provisions” means the 1991 Act, sections 42 to 48 of, and Schedule 6 to, the 1994 Act and the subordinate legislation for the time being in force under any of those enactments; and

“subsidence requirements” means the requirements referred to in section 47(9) of the 1994 Act.

(1) 1994 c. 21.

(2) 1991 c. 45.

(3) See sections 43 and 44 of the 1994 Act.

Appointment of Subsidence Adviser

2.—(1) The Secretary of State shall appoint an independent person as an officer of his (in these Regulations referred to as “the Subsidence Adviser”) to perform the functions conferred on that person by these Regulations.

(2) The Secretary of State shall appoint to the service of the Subsidence Adviser such persons as the Secretary of State considers appropriate.

Provision of information

3.—(1) The Subsidence Adviser shall have the function of providing to persons, other than responsible persons, who request it information relating to—

- (a) the obligations imposed on responsible persons by the subsidence provisions; and
- (b) the procedures for the making and discharge of claims under the subsidence provisions and the discharge by responsible persons of other obligations imposed by those provisions.

(2) Without prejudice to the generality of paragraph (1) above, the information referred to therein shall include information as to the identity of persons with responsibility for subsidence damage affecting particular land.

Provision of assistance

4.—(1) The Subsidence Adviser shall have the function of assisting persons, other than responsible persons, with a complaint of a kind to which this regulation applies by—

- (a) investigating the complaint; and
- (b) providing advice as to the courses of action available to them pending the outcome of his investigation.

(2) A complaint is of a kind to which this regulation applies if it is a complaint made to a responsible person that he—

- (a) has consistently failed to comply with subsidence requirements;
- (b) in the course of complying with a subsidence requirement has caused damage or an unreasonable degree of inconvenience to any person; or
- (c) has been guilty of unreasonable delay in taking any step required to be taken by him under the subsidence requirements or has otherwise been guilty of maladministration in the discharge of his obligations under those requirements

and it does not constitute a question referred by the complainant to the Lands Tribunal or to arbitration under section 40 of the 1991 Act or section 47 of the 1994 Act.

(3) On the notification to the Subsidence Adviser by or on behalf of the complainant of a complaint of a kind to which this regulation applies the Subsidence Adviser shall determine in accordance with paragraph (4) below whether it is appropriate for him to investigate the complaint.

(4) In making his determination, the Subsidence Adviser shall take into account such matters as he thinks fit including, without prejudice to the generality of the foregoing—

- (a) the seriousness of the complaint;
- (b) where the responsible person against whom the complaint is made has a procedure for the resolution of complaints against it, whether that procedure has been invoked or exhausted; and
- (c) where the complainant has the right to refer the matter as a question to the Lands Tribunal or to arbitration, whether it would be reasonable in the circumstances to expect him to exercise that right.

(5) If the Subsidence Adviser determines that it is appropriate for him to investigate the complaint, he shall—

- (a) notify the complainant of his determination;
- (b) notify the responsible person to whom the complaint relates of the fact that he is investigating it;
- (c) consider any representations made by that person and any further representations made by the complainant; and
- (d) subject to sub-paragraphs (a) to (c) above, investigate the complaint in such manner as he considers appropriate.

(6) If at any time during his investigation of a complaint the Subsidence Adviser determines that it is no longer appropriate for him to investigate it he shall discontinue the investigation and notify the complainant and the responsible person.

Making of Recommendations

5.—(1) In any case where the Subsidence Adviser has completed the investigation of a complaint in accordance with regulation 4 he shall—

- (a) determine whether, on the basis of the information available to him, he is of the opinion that the responsible person against whom the complaint is made has engaged in conduct of a kind described in regulation 4(2); and
- (b) notify the complainant and the responsible person of his decision and the reasons for it.

(2) Subject to paragraph (3) below, if the Subsidence Adviser determines that, on the basis of the information available to him, he is of the opinion described in paragraph (1) above he may, if he thinks fit, make a recommendation to the responsible person as to the manner in which that person ought, in the opinion of the Subsidence Adviser, to conduct himself in relation to the matter the subject of the complaint.

(3) Before making a recommendation under paragraph (2) above, the Subsidence Adviser shall notify the responsible person of his intention to make it and shall allow the responsible person a reasonable opportunity to make representations to him.

(4) Where the Subsidence Adviser makes a recommendation under paragraph (2) above he shall send a copy of the recommendation to the complainant, the responsible person against whom the complaint is made and the Coal Authority.

Annual Reports

6.—(1) As soon as reasonably practicable after the end of each financial year the Subsidence Adviser shall make to the Secretary of State a report—

- (a) on the carrying out by the Subsidence Adviser of his functions during the financial year; and
- (b) dealing generally with the way in which responsible persons have conducted themselves in relation to matters investigated by him during the year under regulation 4.

(2) The Subsidence Adviser's report on the matters referred to in paragraph (1)(a) above shall include information as to—

- (a) the approximate number of requests for information received, and responded to, by him under regulation 3 and the general nature of such requests;
- (b) the number of complaints investigated by him under regulation 4 and the general nature of such complaints;

- (c) the number of recommendations made to responsible persons in accordance with regulation 5 and the general nature of such recommendations; and
 - (d) the approximate proportion of the time of the Subsidence Adviser and his staff spent providing, respectively—
 - (i) information in accordance with regulation 3; and
 - (ii) assistance in relation to complaints notified under regulation 4, both in general and in relation to information and complaints of particular kinds.
- (3) Subject to paragraph (4) below, the Subsidence Adviser's annual report on the matters referred to in paragraph (1)(b) above may identify any responsible person whose conduct has, in the opinion of the Subsidence Adviser, given rise to a disproportionate number of complaints which appear to him to be justified (irrespective of whether he has made recommendations in respect of them).
- (4) The Subsidence Adviser shall not identify any person in accordance with paragraph (3) above unless he has notified that person of his intention of doing so and has, after giving him a reasonable opportunity of making representations, considered any representations made by him.
- (5) The Secretary of State shall lay a copy of every annual report made to him under this regulation before each House of Parliament.
- (6) The Subsidence Adviser shall, as soon as reasonably practicable after the laying of an annual report in accordance with paragraph (5) above, send a copy of the report to each person whom the Coal Authority has notified the Adviser to have been a responsible person during the financial year to which the report relates.

Subsidence Adviser's costs

- 7.—(1) Subject to paragraph (2) below the Secretary of State shall, in consultation with the Coal Authority and the Subsidence Adviser, as soon as reasonably practicable after the beginning of the financial year commencing on 1st April 1995 and every financial year thereafter make a determination for the purposes of this regulation by—
- (a) estimating the costs and expenses likely to be incurred during the financial year in question in connection with the carrying out by the Subsidence Adviser of his functions under these Regulations including, without prejudice to the generality of the foregoing, the costs of remunerating the Adviser and his staff; and
 - (b) adding to or subtracting from that estimate, as appropriate, the amount, if any, by which the estimate made by him in accordance with this regulation for the preceding financial year fell short of, or exceeded, the costs and expenses actually so incurred during that financial year.
- (2) In the case of the determination made by the Secretary of State in accordance with paragraph (1) above for the financial year commencing on 1st April 1995, the Secretary of State shall add to the amount estimated in accordance with paragraph (1)(a) above the costs and expenses incurred during the period from the making of these Regulations to 31st March 1995 as mentioned in paragraph (1)(a) above including, without prejudice to the generality of that paragraph, any costs and expenses incurred in establishing the office of the Subsidence Adviser.
- (3) The Secretary of State shall notify the Coal Authority of the amount determined by him in accordance with paragraphs (1) and (2) above and request the Authority to apportion that sum between itself and every other responsible person on the basis of the number of requests for information received by, and complaints notified to, the Subsidence Adviser under these Regulations during the financial year immediately preceding that to which the determination relates in respect of the areas for which they are the responsible person.
- (4) The Coal Authority shall notify every responsible person of—

- (a) the total amount notified to it by the Secretary of State in accordance with paragraph (3) above; and
 - (b) the amount apportioned by it to that responsible person and the calculation of that amount.
- (5) Every responsible person to whom a notification has been given in accordance with paragraph (4) above may, within 21 days commencing with the date of the giving of that notification, make representations to the Coal Authority concerning it.
- (6) The Coal Authority, having considered any such representations, shall notify the responsible person of its final determination with respect to the amount to be apportioned to that person.
- (7) A responsible person shall forthwith pay to the Coal Authority the amount notified to it in accordance with paragraph (6) above; and, in default of payment, the sum due shall be recoverable by the Coal Authority from that person as a civil debt.
- (8) The Coal Authority shall, when so requested by him, pay to the Secretary of State in respect of each financial year the amount determined by the Secretary of State for that year in accordance with paragraphs (1) and (2) above.
- (9) It shall be the duty of the Subsidence Adviser to provide the Coal Authority with such information as it may reasonably request for the purpose of discharging its obligations under this regulation.

3rd October 1994

Tim Eggar
Minister for Industry and Energy,
Department of Trade and Industry

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for the appointment by the Secretary of State of a Subsidence Adviser whose functions are to provide information in respect of the statutory rights of persons affected by subsidence damage and to investigate complaints that persons responsible for remedying subsidence damage have acted improperly in the discharge of claims as mentioned in the Regulations.

Provision is also made for the Subsidence Adviser to make an annual report which is to be laid before Parliament and for the recovery of the costs of the Subsidence Adviser from persons responsible for subsidence damage.