
STATUTORY INSTRUMENTS

1994 No. 2566

COAL INDUSTRY

**The Coal Mining Subsidence
(Arbitration Schemes) 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 47(2), (7), (8) and (10) 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 (Arbitration Schemes) Regulations 1994 and shall come into force on 31st October 1994.

(2) In these Regulations and the Schedules to them, unless the context otherwise requires—

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

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

“the Arbitration Body” means the person or body of persons for the time being appointed in accordance with regulation 7;

“arbitrator” means, in relation to an arbitration, the person for the time being appointed to act as the arbitrator therein;

“claimant” means a person who has made an application in accordance with paragraph 1 of Schedule 1 to these Regulations or paragraph 1 of Schedule 2;

“dispute” means any question to which these Regulations apply by virtue of regulation 2;

“document” includes any map, plan, drawing, photograph, computer record and other record kept otherwise than in documentary form;

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

“the General Arbitration Scheme” means the provisions of Schedule 2 to these Regulations;

(1) 1994 c. 21.

(2) 1991 c. 45. The Act is amended by sections 42 and 43 of, and Schedule 6 to, the 1994 Act.

“the Householders' Arbitration Scheme” means the provisions of Schedule 1 to these Regulations;

“householder” means a person who occupies a dwelling-house and who either is the owner of it or is liable to make good any damage to it in whole or in part;

“notify” means notify in writing;

“respondent” means, in relation to a dispute, the responsible person involved in it;

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

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

(3) In the application of these Regulations to arbitration proceedings which are subject to the law of Scotland—

(a) references to an arbitrator shall be construed as references to an arbiter; and

(b) in any reference to the costs of an arbitration or to the costs of a party, the word “costs” shall be construed as “expenses”.

(4) Unless the context otherwise requires, other expressions appearing in these Regulations shall have the same meaning, if any, as they have in the 1991 Act or the 1994 Act.

(5) References in a Schedule to these Regulations to a numbered paragraph are references to the relevant paragraph of that Schedule.

(6) The amounts payable as registration fees in accordance with Schedules 1 and 2 to these Regulations shall be exclusive of any value added tax that may be chargeable on such fees.

Questions to which Regulations apply

2.—(1) Subject to paragraph (2) below, these Regulations shall apply to any question arising under the 1991 Act and, without prejudice to the generality of the foregoing—

(a) any question as to who is the person with responsibility for subsidence affecting particular land;

(b) the question of whether there has been a contravention of any subsidence requirement;

(c) the question of how any such contravention is to be remedied.

(2) These Regulations do not apply to any question arising under section 32 of the 1991 Act (*compensation for death or disablement*) or section 36 of that Act (*land drainage systems*).

Resolution of questions by arbitration

3.—(1) The provisions of Schedule 1 to these Regulations (“the Householders' Arbitration Scheme”) shall apply to any question to which these Regulations apply arising between a responsible person and a householder.

(2) The provisions of Schedule 2 to these Regulations (“the General Arbitration Scheme”) shall apply to any question to which these Regulations apply which is not for the time being the subject of the procedures specified in Schedule 1.

Arbitrators

4.—(1) Disputes referred to arbitration in accordance with these Regulations shall be determined by a single arbitrator appointed by the Arbitration Body.

(2) The Arbitration Body may, where it considers that special circumstances apply, appoint one or more persons to assist the arbitrator on matters of a technical or legal nature.

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

(3) The Arbitration Body may appoint a substitute for the arbitrator, or any person appointed under paragraph (2) above, in the event of him misconducting himself or dying, becoming incapacitated or for any other reason being unable to attend expeditiously to his duties.

(4) The Arbitration Body shall notify all the parties to a dispute of the appointments made by it under this regulation in connection with the dispute.

Costs of arbitration proceedings

5.—(1) Subject to paragraph (2) below and to the provisions of Schedule 1 concerning the payment of registration fees—

- (a) each party to an arbitration under the Householders' Arbitration Scheme shall pay his own costs and the respondent shall pay all the fees and expenses incurred by the arbitrator and any person appointed to assist him under regulation 4(2); and
- (b) the costs of an arbitration under the General Arbitration Scheme shall be paid by the parties to the dispute in accordance with the provisions of Schedule 2.

(2) Paragraph (1) above shall not apply—

- (a) where any arbitration proceedings under these Regulations are subject to the law of England and Wales, to the costs of any appeal or application to the High Court in respect of the proceedings; or
- (b) where any arbitration proceedings under these Regulations are subject to the law of Scotland, to the expenses of any proceedings brought in the Court of Session for the opinion of that Court on any question of law arising in the proceedings, or for the challenge or correction of an award made by the arbiter.

Applicable law

6.—(1) A dispute referred to arbitration in accordance with these Regulations shall be determined, in relation to any question concerning the arbitration procedure, according to the law of the place where the arbitration is held.

(2) Subject to paragraph (1) above, the dispute shall be determined according to the law for the time being in force in England and Wales or to the law for the time being in force in Scotland as the parties to the dispute may agree or, in default of agreement, as determined by the arbitrator.

Appointment of Arbitration Body

7. The Secretary of State shall appoint a person or body of persons (“the Arbitration Body”) to administer the reference of disputes to arbitration in accordance with these Regulations.

Costs of Arbitration Body

8.—(1) Subject to paragraph (2) below, the Secretary of State shall, in consultation with the Arbitration Body, 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 likely costs and expenses of the Arbitration Body during the financial year in question in connection with the carrying out of its functions under these Regulations; 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 of the Arbitration Body for the period from the making of these Regulations to 31st March 1995 in connection with the carrying out of its functions under these Regulations.

(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 amount between itself and every other responsible person on the basis of the number of applications for arbitration received by the Arbitration Body during the financial year immediately preceding that to which the determination applies which relate to the area 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 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 Arbitration Body 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

SCHEDULE 1

Regulation 3(1)

THE HOUSEHOLDERS' ARBITRATION SCHEME

Institution of arbitration proceedings

1.—(1) Subject to sub-paragraph (2) below, a claimant may make an application for the arbitration of a dispute in accordance with the provisions of this Schedule by sending to the Arbitration Body an application in that behalf and a registration fee of £50.

(2) No application for arbitration may be made by a person in respect of a dispute concerning the same, or substantially the same, matter as that in respect of which a notification has been given under paragraph 11 or 12(1).

2.—(1) On receipt of an application in accordance with paragraph 1, the Arbitration Body shall—

- (a) decide whether, in its opinion, the dispute appears to be suitable for resolution in accordance with the provisions of this Schedule; and
- (b) notify both the claimant and the respondent of its decision and, if it decides that the dispute is not suitable for such resolution, its reasons for so deciding.

3. If the Arbitration Body notifies the respondent that the dispute is, in its opinion, suitable for resolution in accordance with the provisions of this Schedule—

- (a) the respondent shall forthwith send to the Arbitration Body a registration fee of £50; and
- (b) the Arbitration Body shall within 21 days commencing with the date of the giving of that notification—
 - (i) appoint an arbitrator to determine the dispute;
 - (ii) notify the parties of the identity of the person so appointed; and
 - (iii) send to the claimant a claim form.

Arbitration procedure

4. The claimant shall within—

- (a) the period of 28 days commencing with the date of receiving the claim form forwarded in accordance with paragraph 3; or
- (b) such further period as the arbitrator may at any time specify by notice given to each party complete and return the claim form to the arbitrator and send a copy of the completed form to the respondent.

5.—(1) Subject to sub-paragraph (2) below, the respondent shall, within 28 days of receiving his copy of the completed claim form, send to both the arbitrator and the claimant—

- (a) a statement of his response to the claim; and
- (b) a copy of every document upon which he wishes to rely.

(2) The arbitrator may on the application of the respondent extend the period of 28 days referred to in sub-paragraph (1) above by a period not exceeding 14 days, by notifying each party of the extension.

6. The claimant shall be entitled to submit to the arbitrator and to the respondent written comments on the matters specified in paragraph 5(1) within the period of 14 days commencing with the date of his receiving those matters.

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7. The arbitrator may request any party to the dispute to submit to him, within such period as the arbitrator may specify, such further documents, information or other evidence as the arbitrator considers desirable and the arbitrator shall provide the other party to the dispute with an opportunity to comment on any matters so submitted within such period as the arbitrator may specify.

- 8.—(1) Within 28 days beginning with the date of whichever is the later of—
- (a) the expiry of the period of 14 days referred to in paragraph 6;
 - (b) if any further evidence has been requested in accordance with paragraph 7, the expiry of the second period referred to in that paragraph; or
 - (c) if an inspection has taken place following a notification under paragraph 9, the completion of that inspection

the arbitrator shall send to each party a statement in writing of his award with respect to the matters in dispute and of his reasons for making it.

(2) The arbitrator may as part of his decision direct that one party reimburse the registration fee paid by the other party.

Site inspections

9.—(1) The arbitrator shall give to the parties to the dispute reasonable notice of any inspection he proposes to make of the dwelling-house by virtue of which the claimant is a qualifying householder.

(2) The claimant shall permit the arbitrator to carry out such inspection of the dwelling-house as he may reasonably require and shall permit the respondent or his authorised representative to be present at any such inspection.

Effect of failure to submit evidence

- 10.—(1) If the claimant fails to submit a completed claim form in accordance with paragraph 4—
- (a) the claimant shall be deemed to have abandoned his claim; and
 - (b) the Arbitration Body shall so notify the claimant and return the registration fee paid by the respondent in accordance with paragraph 3.
- (2) If—
- (a) the respondent fails to comply with the requirements of paragraph 5; or
 - (b) any party fails to comply with the requirements of paragraph 7

the arbitrator shall, subject to any directions he may give, decide the dispute by reference to the documents submitted to him.

Withdrawal of claims

11. The claimant may at any time by notifying the arbitrator and the respondent withdraw the dispute from the arbitration and—

- (a) the dispute shall forthwith cease to be the subject of arbitration in accordance with the provisions of this Schedule;
- (b) the Arbitration Body shall be entitled to retain the registration fees paid by the claimant and the respondent; and
- (c) the arbitrator may direct that one party reimburse the registration fee paid by the other party.

Termination of arbitration

12.—(1) If at any time before the making of his award in accordance with paragraph 8 the arbitrator determines that in his opinion the claim is not capable of proper resolution under the provisions of this Schedule he shall notify the parties to the dispute—

- (a) of his determination; and
- (b) of whether, in his opinion, the dispute is capable of resolution in accordance with the General Arbitration Scheme.

(2) If notification is given in accordance with sub-paragraph (1) above the claim shall cease to be subject to arbitration in accordance with the provisions of this Schedule and, unless the claimant gives notice in accordance with sub-paragraph (3) below, the Arbitration Body shall repay the registration fees paid by the claimant and the respondent.

(3) In the event of the arbitrator notifying the parties in accordance with sub-paragraph (1) (b) above that, in his opinion, the dispute is capable of resolution in accordance with the General Arbitration Scheme, the claimant may within 14 days of his receiving that notification notify the arbitrator and the respondent that he wishes the arbitration to proceed in accordance with that Scheme, and accordingly—

- (a) the notification by the claimant shall, if accompanied by a registration fee of £25, constitute the making of an application for the purposes of paragraph 1 of Schedule 2;
- (b) the Arbitration Body shall be deemed for the purposes of paragraph 2(a) of Schedule 2 to have decided that the dispute is suitable for resolution in accordance with the provisions of that Schedule, and to have notified the parties accordingly;
- (c) the sum due from the respondent in accordance with paragraph 3(a) of Schedule 2 shall be reduced by the amount of the registration fee paid by him in accordance with paragraph 3(a) of this Schedule; and
- (d) the arbitrator shall conduct the arbitration in accordance with Schedule 2 as if he had been appointed by the Arbitration Body under paragraph 3(b)(i) of that Schedule.

SCHEDULE 2

Regulation 3(2)

THE GENERAL ARBITRATION SCHEME

Institution of arbitration proceedings

1. A claimant may make an application for the arbitration of a dispute in accordance with the provisions of this Schedule by sending to the Arbitration Body an application in that behalf and a registration fee of £75.

2. On receipt of an application in accordance with paragraph 1, the Arbitration Body shall—

- (a) decide whether, in its opinion, the dispute appears to be suitable for resolution in accordance with the provisions of this Schedule; and
- (b) notify both the claimant and the respondent of its decision and, if it decides that the dispute is not suitable for such resolution, its reasons for so deciding.

3. If the Arbitration Body notifies the parties that the dispute is, in its opinion, suitable for resolution in accordance with the provisions of this Schedule—

- (a) the respondent shall forthwith send to the Arbitration Body a registration fee of £75; and

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- (b) the Arbitration Body shall within 21 days commencing with the date of the giving of that notification—
 - (i) appoint an arbitrator to determine the dispute; and
 - (ii) notify the parties of the person so appointed.

Arbitration procedure

4. The claimant shall, within the period of 28 days commencing with the date of his receiving notification from the Arbitration Body as mentioned in paragraph 3, send by registered post to the arbitrator and to the respondent a claim file containing—

- (a) a brief statement of the claimant's principal arguments of fact and law and of the remedies sought by him; and
- (b) a copy of every document upon which he intends to rely.

5. Within 28 days commencing with the date of his receiving his copy of the claim file the respondent shall send by registered post to the arbitrator and to the claimant a respondent's file containing—

- (a) a brief statement of the respondent's principal arguments of fact and law; and
- (b) a copy of every document upon which he wishes to rely.

6. Within the period of 14 days commencing with the date of his receiving the respondent's file, the claimant may send by registered post to the arbitrator and to the respondent—

- (a) comments on the matters contained in that file;
- (b) a copy of any further documents relating to those matters upon which he wishes to rely.

7. The arbitrator may, at his discretion, and upon notifying the other party—

- (a) permit either party to send to him and to the other party further comments on the other party's case; and
- (b) extend any of the time limits specified in paragraphs 4 to 6.

Directions as to further conduct of arbitration

8.—(1) Within 28 days commencing with the completion of the procedure described in paragraphs 4 to 7 the arbitrator shall invite the parties to make representations to him concerning the further conduct of the arbitration either in writing or at a meeting convened by the arbitrator at a place which is reasonably convenient for each party.

(2) Within 14 days of the making of representations in accordance with sub-paragraph (1) above the arbitrator shall give directions to the parties as to the further conduct of the arbitration.

(3) Without prejudice to the generality of sub-paragraph (2) above, the directions which may be made under that sub-paragraph may include a direction—

- (a) that an inspection of any premises the subject of the dispute take place;
- (b) convening an oral hearing of the parties;
- (c) that, in the interests of the expeditious determination of the claim—
 - (i) a particular issue be determined by the arbitrator before other issues; or
 - (ii) that particular steps be taken by one or both parties;
- (d) that a party to the arbitration provide such further documents, information or other evidence as may be specified;
- (e) that a party to the arbitration provide security for costs.

(4) If any direction by the arbitrator under this paragraph is not complied with he may proceed with the arbitration on the assumption that compliance with the direction would not have favoured the party in default.

Oral hearings

9.—(1) Any direction under paragraph 8 as to the convening of an oral hearing of the parties shall—

- (a) specify a date for the commencement of the hearing which shall be as soon as reasonably practicable after the giving of the direction; and
 - (b) specify a place for the hearing which shall be reasonably convenient for each of the parties.
- (2) The procedure to be followed at the hearing shall be determined by the arbitrator.

Arbitrator's awards

10.—(1) In respect of every award made by him the arbitrator shall send to each party a written statement of the terms of the award and of his reasons for making it.

(2) The arbitrator may make an award in respect of liability for the costs of the arbitration and of every award made in the course of it, including the fees of all persons who have acted as an arbitrator or have been appointed to assist the arbitrator under regulation 4(2).

(3) In respect of arbitration proceedings which are subject to the law of Scotland, the costs referred to in sub-paragraph (2) above shall be subject to taxation by the auditor of the sheriff court on the application of either party, but that taxation shall be subject to review by the sheriff.

(4) The arbitrator shall make his final award in respect of the substantive issues in dispute before the expiry of 28 days commencing with the first day on which all fees properly payable to him and to any other person who has acted in the arbitration as an arbitrator or as a person appointed to assist the arbitrator under regulation 4(2) have been paid.

Fees

11.—(1) Subject to sub-paragraph (2) below, the parties to the arbitration shall be jointly and severally liable for the fees of the arbitrator and of any other person as mentioned in paragraph 10(4).

(2) Sub-paragraph (1) above shall be without prejudice to the right of a party to the arbitration to recover from the other party in accordance with an award of the arbitrator any fees paid by him under that sub-paragraph.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations establish arbitration schemes for the determination of disputes with respect to claims relating to coal mining subsidence.

The Regulations establish a Householders' Arbitration Scheme for claims in respect of dwellings and a General Arbitration Scheme for use in other cases or where the Householders' Scheme is inappropriate. The costs of arbitrations under the Householders' Arbitration Scheme, other than

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registration fees, are to be met by the respondent. Costs under the General Arbitration Scheme are to be met by the parties in accordance with the arbitrator's (or, in Scotland, the arbiter's) award.

The Regulations provide for an Arbitration Body to be appointed by the Secretary of State to administer the Schemes and for its costs to be recovered from persons with responsibility for subsidence damage.