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STATUTORY INSTRUMENTS

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**1994 No. 3064**

**COAL INDUSTRY**

**The Coal Mining Subsidence (Land Drainage) Regulations 1994**

*Made* - - - - *30th November 1994*  
*Laid before Parliament* *1st December 1994*  
*Coming into force* - - *24th December 1994*

The Secretary of State and the Minister of Agriculture, Fisheries and Food, in exercise of the powers conferred on them by sections 36(7) and 50 of the Coal Mining Subsidence Act 1991(1), and of all other powers enabling them in that behalf, hereby jointly make the following Regulations:

**Citation, commencement and interpretation**

1.—(1) These Regulations shall be known as the Coal Mining Subsidence (Land Drainage) Regulations 1994 and shall come into force on 24th December 1994.

(2) In these Regulations—

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

“the Ministers” means the Secretary of State and the Minister of Agriculture, Fisheries and Food acting together;

“remedial measures” means such measures as are referred to in section 36(1) of the 1991 Act; and

“the responsible person” means,

(a) in relation to subsidence damage that has occurred, the person who, by virtue of sections 43 and 44 of the Coal Industry Act 1994(2), is the responsible person in relation to that damage; and

(b) in relation to such subsidence damage as appears likely to occur, the person who would be the person referred to in sub-paragraph (a) above in relation to that damage if it did occur.

**Determination of questions**

2. Subject to regulation 3 below, in default of agreement, any question arising under section 36 of the 1991 Act as between the responsible person and the appropriate drainage authority shall be

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(1) 1991 c. 45. Section 36 has effect as modified by section 43 of, and paragraph 6 of Schedule 6 to, the Coal Industry Act 1994 c. 21.  
(2) 1994 c. 21.

referred to and determined by an arbitrator agreed for that purpose or, in default of such agreement, appointed by the President of the Institute of Civil Engineers.

### **Determination of certain questions by Ministers**

**3.—(1)** Where either the appropriate drainage authority or the responsible person so requests, any question as to—

- (i) the reasonableness of any such requirement as is referred to in section 36(1) of the 1991 Act, or
- (ii) the timing of remedial measures,

shall be referred to and determined by the Ministers in accordance with this regulation.

(2) The person making a request for any question to be so referred and determined shall—

- (i) make the request in writing;
- (ii) specify in the request the questions to be determined;
- (iii) supply copies of the request to every other party to the determination; and
- (iv) comply with such other requirements (whether general or specific in nature) as to the form and manner in which the questions may be submitted, and the period within which they may be submitted, as the Ministers may by notice specify.

(3) The Ministers shall, before making any determination under paragraph

(1) above, allow every party to the determination a reasonable opportunity to make representations to them.

(4) Subject to paragraph (5) below, a determination under paragraph (1) above shall be final.

(5) Where, after a determination under paragraph (1) above, the Ministers are satisfied on an application made to them in that behalf by any party to that determination that fresh evidence has become available which—

- (i) could not reasonably have been discovered before such determination, and
- (ii) renders it desirable for them to reconsider that determination,

they shall, after giving notice in writing to every party to that determination and allowing every such party a reasonable opportunity to make representations to them, make a further determination.

(6) A party making an application under paragraph (5) shall—

- (i) make the application in writing;
- (ii) specify particulars of the fresh evidence; and
- (iii) supply copies of the application to every other party to the determination under paragraph (1).

### **Arbitration Acts 1950 to 1979**

**4.—(1)** Any reference to arbitration in pursuance of regulation 2 above shall be deemed to be a reference under an arbitration agreement for the purposes of the Arbitration Acts 1950 to 1979.

(2) Sections 12 and 18 of the Arbitration Act 1950<sup>(3)</sup> (which relate respectively to the conduct of proceedings and to costs) shall apply to any reference to the Ministers in pursuance of regulation 3 above (including every application under regulation 3(5) in respect of which the Ministers are satisfied as there mentioned) as if that reference were made under an arbitration agreement.

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(3) 1950 c. 27.

### **Election by responsible person**

5.—(1) Subject to paragraph (2) below, after being informed by the appropriate drainage authority of the remedial measures that the responsible person is required to carry out in accordance with section 36(1) of the 1991 Act, the responsible person shall, as soon as reasonably practicable in the circumstances, give notice in writing to that authority stating that it has elected either—

- (a) to carry out such measures itself, or
- (b) to make a payment to that authority in pursuance of section 36(2).

(2) Where the responsible person and the appropriate drainage authority have not agreed upon the remedial measures in question, or any question regarding—

- (i) the form which such measures are to take,
- (ii) the timing of such measures, or
- (iii) the reasonableness of such measures,

has been referred to arbitration or the Ministers in accordance with these Regulations, the requirement to give notice in accordance with paragraph (1) above shall not apply until such agreement has been reached or such question determined.

(3) Subject to regulation 6 below, an election made in accordance with paragraph (1) shall be binding on the responsible person, unless the appropriate drainage authority agrees otherwise.

(4) Where the responsible person has made an election to make a payment in accordance with paragraph (1)(b) above, the appropriate drainage authority shall—

- (i) give notice in writing to the responsible person specifying particulars of the remedial measures which they intend to carry out or, where it is their intention to merge the carrying out of the measures with the execution of other works in accordance with section 36(2)(b) of the 1991 Act, particulars of such works, not less than 28 days before the measures or the works are begun; and—
- (ii) so far as it is within their power to do so, afford the responsible person reasonable facilities for inspecting the area in which the measures or the works are to be carried out.

### **Variation of remedial measures**

6.—(1) Where, after remedial measures have been agreed or determined in the manner provided by these Regulations, those measures are varied either—

- (i) by agreement between the responsible person and the appropriate drainage authority,
- (ii) by a further determination made by the Ministers under regulation 3(5) above, or
- (iii) by an award made under section 22 of the Arbitration Act 1950(4) or an order or award made under section 1 of the Arbitration Act 1979(5),

every such variation shall be deemed to revoke any notice given under regulation 5(1) above, and the responsible person shall give a further notice under that regulation.

(2) Nothing in this regulation shall relieve the responsible person from liability to make any payment to the appropriate drainage authority in respect of such measures as have been carried out by that authority before any such variation.

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(4) 1979 c. 42.  
(5) S.I.1958/1486.

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

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### **Revocation of the Coal-Mining Subsidence (Land Drainage) Regulations 1958**

7. The Coal-Mining Subsidence (Land Drainage) Regulations 1958(5) in so far as they continue to have effect are hereby revoked.

Department of Trade and Industry  
29th November 1994

*Charles Wardle*  
Parliamentary Under Secretary of State for  
Industry and Energy,

Ministry of Agriculture,  
Fisheries and Food  
30th November 1994

*Howe*  
Parliamentary Secretary (Lords),

## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

These Regulations prescribe the manner in which questions with respect to subsidence damage affecting land drainage, arising between persons responsible for such damage and the appropriate drainage authorities under section 36 of the Coal Mining Subsidence Act 1991 (as amended by the Coal Industry Act 1994), are to be determined, and prescribe the procedure to be followed after measures in relation to such damage have been agreed, determined or varied. The Regulations largely reproduce the effect of [S. I. 1958/1486](#), with appropriate amendments to take account of the 1991 and 1994 Acts.