

Changes to legislation: There are currently no known outstanding effects for the Coal Mining Subsidence Act 1991, SCHEDULE 5. (See end of Document for details)

SCHEDULES

SCHEDULE 5

Section 23(1).

RELIEF FOR TEMPORARY DISPOSSESSION

Commencement Information

I1 Sch. 5 wholly in force at 30. 11. 1991 see s. 54(2) and S.I. 1991/2508, art. 2

Preliminary

1 In this Schedule—

“the local authority” means the local authority within the meaning of the ^{M1}Housing Act 1985, or the local authority within the meaning of the ^{M2}Housing (Scotland) Act 1987, in whose area the dwelling-house is situated;

“the occupier” means the person who immediately before the deterioration in the condition of the dwelling-house was entitled to possession of it;

“the period of dispossession” means the period during which the requirements of section 23(2) of this Act are satisfied;

“rent” includes any mortgage interest, interest on a heritable security, service charges or water charges payable in respect of a dwelling-house and any community charges payable in respect of periods of residence in, or periods of having an interest in, a dwelling-house;

“resident” means any person ordinarily resident in the dwelling-house during the period immediately preceding the deterioration in its condition.

Commencement Information

I2 Sch. 5 para. 1 wholly in force at 30. 11. 1991 see s. 54(2) and S.I. 1991/2508, art. 2

Marginal Citations

M1 1985 c. 68.

M2 1987 c. 26.

Obligations of Corporation

2 (1) Subject to the following provisions of this Schedule, in the case of any resident, the 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 is of a standard comparable to the general standard of the housing accommodation under the management of the local authority and is otherwise reasonable having

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- regard to all the circumstances, including the probable duration of the period of dispossession; or
- (b) to pay to the resident the amount, if any, by which the aggregate expenditure reasonably incurred by him by way of rent, 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.
- (2) The Corporation shall not be under any obligation under sub-paragraph (1) above 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.
- (3) Subject to paragraph 4(2) and (3) below, and without prejudice to their liability under sub-paragraph (1) above in respect of any part of the period of dispossession falling before the making of their election, the Corporation may elect which of the two courses open to them under sub-paragraph (1) above they will for the time being adopt in any particular case.
- (4) In the case of any resident towards whom the Corporation are under an obligation by virtue of sub-paragraph (1) above, they shall also be under an obligation to pay—
- (a) his reasonable expenses in removing from the dwelling-house of which he is temporarily dispossessed; and
- (b) any expenses reasonably incurred by him in consequence of the temporary dispossession.

Commencement Information

I3 Sch. 5 para. 2 wholly in force at 30. 11. 1991 see s. 54(2) and S.I. 1991/2508, art. 2

Cessation of obligations

- 3 (1) Subject to sub-paragraphs (2) and (3) below, the obligations of the Corporation towards any resident under paragraph 2(1) above 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 the dwelling-house or, as the case may be, of the site of the dwelling-house; or
- (b) on the expiration of a period of six months from the service by the Corporation on the resident in question of notice of the opinion of the Corporation—
- (i) that the period of dispossession will continue indefinitely or will be unreasonably long; or
- (ii) 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 given in respect of the dwelling-house, the Corporation shall not be entitled to give a notice under sub-paragraph (1)(b)(i) above—
- (a) unless the Corporation have elected to make a payment under section 8 or 10 of this Act or are obliged to make a payment under section 11(1) of this Act; or

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- (b) while a notice under section 16(2) of this Act is in force with respect to the dwelling-house.
- (3) Any person upon whom a notice under sub-paragraph (1)(b) above 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 Corporation, may declare the notice to be of no effect.

Commencement Information

I4 Sch. 5 para. 3 wholly in force at 30.11.1991 see s. 54(2) and S.I. 1991/2508, art. 2

Procedural requirements

- 4 (1) The Corporation shall not be under any obligation by virtue of paragraph 2(1) above unless either the owner or the occupier of the dwelling-house is a resident and—
 - (a) has given to the Corporation notice, within such time and containing such particulars as may be prescribed, that in his opinion the requirement specified in section 23(2)(a) of this Act is satisfied; and
 - (b) has afforded the Corporation 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 sub-paragraph (1) above, the Corporation shall give to that person notice—
 - (a) as to whether or not they agree with that person's opinion; and
 - (b) if they so agree, as to the manner in which they propose to discharge their obligations under paragraph 2(1) above;and where in the circumstances of any particular case it appears to the Corporation appropriate to do so, they may serve a separate such notice on any other resident.
- (3) In giving such a notice, the Corporation shall not unreasonably refuse any request from a resident to adopt in his case such of the alternatives set out in paragraph 2(1) above as is specified in the request.
- (4) Where the Corporation have given notice to any resident of an intention to adopt in his case either of those alternatives, they shall not adopt in his case the other of those alternatives without his consent, which shall not be unreasonably withheld.

Commencement Information

I5 Sch. 5 para. 4 wholly in force at 30.11.1991 see s. 54(2) and S.I. 1991/2508, art. 2

Alternative living accommodation

- 5 (1) This paragraph applies where, in pursuance of paragraph 2(1)(a) above, the Corporation have made alternative living accommodation available to a resident.
- (2) The Corporation shall be entitled to possession of the accommodation so made available—
 - (a) in a case falling within paragraph 3(1)(b) above, at the expiration of the period of six months there mentioned; and

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- (b) without prejudice to any obligations of the Corporation under paragraph 2(1) above or to the provisions of paragraph 4(4) above, at any time not less than one month after the Corporation have given notice to the resident in question of their intention to take possession.
- (3) Where notice is given under sub-paragraph (2)(b) above, the obligations of the Corporation under paragraph 2(1) above shall continue until the expiration of the month mentioned in that sub-paragraph, or such longer period as may be specified in the notice, notwithstanding that the period of dispossession may have expired.
- (4) Subject to sub-paragraphs (6) and (7) below, the 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 is less than it would have been if the subsidence damage had not occurred and he had continued to reside in the dwelling-house.
- (5) Subject to sub-paragraph (6) below, the Corporation shall be under an obligation to pay to the resident in question—
 - (a) any amount by which the aggregate expenditure incurred by him by way of rent is greater than it would have been if the subsidence damage had not occurred and he had continued to reside in the dwelling-house; and
 - (b) any amount by which he shows that the aggregate expenditure reasonably incurred by him by way of food, living accommodation (other than rent), heating, light and other household expenses is greater than it would have been in those circumstances.
- (6) In any case where the Corporation—
 - (a) are entitled to recover an amount by virtue of sub-paragraph (4) above; and
 - (b) are under an obligation to pay an amount by virtue of sub-paragraph (5)(b) above,
 the two amounts shall be set off one against the other and extinguished or reduced accordingly.
- (7) The Corporation shall not be entitled to recover any amount under sub-paragraph (4) above 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 the local authority.

Commencement Information

I6 [Sch. 5 para. 5](#) wholly in force at 30.11.1991 see [s. 54\(2\)](#) and [S.I. 1991/2508, art. 2](#)

Supplemental

- 6 (1) This paragraph applies where—
 - (a) no damage notice has been given in respect of the dwelling-house; or
 - (b) the Corporation have elected to make a payment under section 8 or 10 of this Act or are obliged to make a payment under section 11(1) of this Act.
- (2) During any period while the Corporation are under an obligation by virtue of paragraph 2(1) above, 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 Corporation.

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Commencement Information

I7 Sch. 5 para. 6 wholly in force at 30. 11. 1991 see s. 54(2) and S.I. 1991/2508, **art. 2**

- 7 Where the Corporation have elected to make a payment in respect of the dwelling-house under section 8(4) of this Act, the 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 Corporation under this Schedule in connection with the dwelling-house exceeds what it would have been if remedial works only had been executed.

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Commencement Information

I8 Sch. 5 para.7 wholly in force at 30. 11. 1991 see s. 54(2) and S.I. 1991/2508, **art.2**

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