



Coal Mining Subsidence Act 1991

1991 CHAPTER 45

PART IV

PREVENTIVE AND OTHER MEASURES

Commencement Information

II Part IV wholly in force at 30.11.1991 see s. 54(2) and [S.I. 1991/2508, art.2](#).

33 Existing buildings, structures or works.

- (1) This section applies where it appears ^{F1} . . .—
- (a) that subsidence damage is likely to occur to any building, structure or works for the time being on, in or over any land; and
 - (b) that the execution of certain works (“preventive works”) on that property, or on that property and some other property which would benefit from those preventive works, would prevent the occurrence or reduce the extent of such damage.
- (2) The Corporation may—
- (a) with the consent of all persons who are owners of any property on which the preventive works would fall to be executed, or who would be liable to make good in whole or in part subsidence damage to any of that property, execute the preventive works; or
 - (b) upon undertaking to pay any cost reasonably incurred in the execution of the preventive works, request their execution by the owner of the property on which they would fall to be executed or any other person who would be liable as mentioned in paragraph (a) above in respect of that property.
- (3) If in the case of any property any person unreasonably withholds his consent to the execution of preventive works by the Corporation under this section, or unreasonably fails to comply with any request to execute such works made by the Corporation under this section, and subsidence damage subsequently occurs to the property, then—

Status: Point in time view as at 01/04/1996.

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- (a) if the damage could have been prevented by the execution of the preventive works, the Corporation shall not be required to take any remedial action in respect of that damage;
 - (b) if the extent of the damage could have been reduced by the execution of the preventive works, the Corporation shall not be required to take any remedial action which would not have been required if the preventive works had been executed; and
 - (c) if the property is a dwelling-house, the person concerned shall not be entitled, in respect of the damage, to give a notice under paragraph 4 of Schedule 5 to this Act or to receive any relief under that Schedule.
- (4) Where different consents are required in respect of different parts of any property, those different parts shall be treated as different properties for the purposes of subsection (3) above.
- (5) Paragraphs (a) and (b) of subsection (3) above shall not apply in the case of a failure to comply with a request under this section if the failure is the result of an express refusal to comply or permit compliance by one or more, but not both or all, of two or more persons whose compliance or permission is necessary.
- (6) The following, namely—
- (a) the withholding by any person of consent to the execution of preventive works on any property by the Corporation under this section; and
 - (b) the failure to comply with any request to execute such works made by the Corporation under this section,
- are not to be regarded as unreasonable in a case to which section 9 above applies.
- (7) Where any such property as is mentioned in paragraph (a) of subsection (2) above is ecclesiastical property within the meaning of section 20 above, the Church Commissioners shall be included among the persons whose consent is required by that paragraph.

Textual Amendments

F1 Words in s. 33(1) repealed (31.10.1994) by 1994 c. 21, ss. 43, 67(8), Sch. 6 para. 3(1), **Sch. 11 Pt. II** (with ss. 40(7), 66); S.I. 1994/2553, **art. 2**

Modifications etc. (not altering text)

C1 S. 33(2)-(6) modified (31.10.1994) by 1994 c. 21, s. 43, **Sch. 6 para. 6** (with ss. 40(7), 66); S.I. 1994/2553, **art. 2**

Commencement Information

I2 S. 33 wholly in force at 30.11.1991 see s. 54(2) and S.I. 1991/2508, **art. 2**

F234

Textual Amendments

F2 S. 34 repealed (31.10.1994) by 1994 c. 21, ss. 42(2), 67(8), **Sch. 11 Pt. II** (with ss. 40(7), 66, Sch. 10 para. 13(1)); S.I. 1994/2553, **art. 2**

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F3 35

Textual Amendments

F3 S. 35 repealed (31.10.1994) by 1994 c. 21, ss. 42(2), 67(8), **Sch. 11 Pt. II** (with ss. 40(7), 66); S.I. 1994/2553, **art. 2**

36 Land drainage systems. E+W

- (1) Subject to subsections (2) to (4) below, the Corporation shall, in any area in England and Wales outside the Doncaster Drainage Area, from time to time carry out—
 - (a) to the reasonable satisfaction of the appropriate drainage authority; and
 - (b) in accordance with such arrangements as to timing as may be agreed or determined,
such measures (if any) for remedying, mitigating or preventing any deterioration in a land drainage system, by reason of subsidence damage which has occurred or appears likely to occur, as may be reasonably required by the appropriate drainage authority.
- (2) The Corporation may elect, in respect of any such measures, not to carry out the measures themselves but to make to the appropriate drainage authority—
 - (a) a payment equal to the cost reasonably incurred by the authority in carrying out the measures; or
 - (b) if the authority propose to merge the carrying out of the measures with the execution of other works, payments equal to any sums from time to time shown to have been expended by the authority in carrying out the merged operations up to the appropriate amount;
and in this subsection “the appropriate amount” means such aggregate amount as may be agreed or determined to be reasonable in all the circumstances, having regard to the expenditure which would have been incurred by the Corporation or by the authority in carrying out the measures.
- (3) The Corporation—
 - (a) in a case where the measures fall to be carried out in connection with property comprised in a main river, shall make the appropriate election under subsection (2) above; and
 - (b) in any other case, shall not unreasonably refuse any request to make that election received from the appropriate drainage authority;
but the Corporation shall not be deemed to act unreasonably in refusing any such request received after the Corporation have begun to carry out the measures.
- (4) Notwithstanding anything in subsections (1) to (3) above, in any case where it is agreed or determined to be appropriate, the liability of the Corporation for the cost of any recurring measures may be discharged by a lump sum payment agreed or determined to represent the capital amount of that cost.
- (5) Section 16 above (except subsections (6) to (8)) shall apply in any case where—
 - (a) a damage notice has been given to the Corporation in respect of any property;
and

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- (b) the Corporation are of the opinion with respect to all or any of the permanent works which would otherwise fall to be executed in connection with the property that—
- (i) the necessity for those works; or
 - (ii) the nature or manner of their execution,
- is likely to be so affected by operations under this section, or under Part II of the ^{M1}Doncaster Area Drainage Act 1929, as to make it unreasonable that those works should be executed for the time being;

and in its application to any stop notice given by virtue of this subsection, section 17(1) above shall have effect as if it referred to the Corporation no longer being of such opinion as is mentioned in paragraph (b) above.

- (6) The Corporation shall, for the purpose of carrying out any measures under this section, have the like powers—
- (a) of surveying and entering on any land; and
 - (b) of doing anything on land entered by them,
- as are conferred on the appropriate drainage authority by the enactments relating to land drainage; but nothing in this subsection shall apply in relation to any land occupied by or on behalf of the Crown.
- (7) Regulations made by the Secretary of State and the Minister of Agriculture, Fisheries and Food acting jointly may make provision—
- (a) with respect to the procedure to be followed by the Corporation and by the appropriate drainage authority in giving effect to the provisions of this section; and
 - (b) for the determination of questions arising under this section between the Corporation and the authority.
- (8) In this section—
- “agreed or determined” means agreed between the Corporation and the appropriate drainage authority or, in default of such agreement, determined in the manner provided by regulations under this section;
- “the appropriate drainage authority” means—
- (a) in a case where the measures would fall to be carried out either in connection with a main river, or outside any internal drainage district, the National Rivers Authority;
 - (b) in any other case, the internal drainage board in whose district the measures would fall to be carried out;
- “the Doncaster Drainage Area” has the same meaning as in the Doncaster Area Drainage Act 1929;
- “land drainage system” means a drainage system maintainable by a drainage authority;
- “main river” means a main river for the purposes of [^{F4}Part IV of the Water Resources Act 1991].

Extent Information

- E1** This version of this provision extends to England and Wales only; a separate version has been created for Scotland only

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Textual Amendments

- F4** Words in s. 36(8) substituted (E.W.) (01.12.1991) by [Water Consolidation \(Consequential Provisions\) Act 1991 \(c. 60, SIF 130\)](#), ss. 2(1), 4(2), [Sch. 1 para. 59](#).

Modifications etc. (not altering text)

- C2** S. 36 modified (31.10.1994) by [1994 c. 21, s. 43, Sch. 6 para. 6](#) (wwith ss. 40(7), 66); [S.I. 1996/2553, art. 2](#)

Commencement Information

- I3** S. 36 wholly in force (E.W.) at 30.11.1991 see s. 54(2) and [S.I. 1991/2508, art. 2](#).

Marginal Citations

- M1** [1929 c. xvii](#).

36 Land drainage systems. **S**

- (1) Subject to subsections (2) to (4) below, the Corporation shall, in any area in England and Wales outside the Doncaster Drainage Area, from time to time carry out—
- to the reasonable satisfaction of the appropriate drainage authority; and
 - in accordance with such arrangements as to timing as may be agreed or determined,

such measures (if any) for remedying, mitigating or preventing any deterioration in a land drainage system, by reason of subsidence damage which has occurred or appears likely to occur, as may be reasonably required by the appropriate drainage authority.

- (2) The Corporation may elect, in respect of any such measures, not to carry out the measures themselves but to make to the appropriate drainage authority—
- a payment equal to the cost reasonably incurred by the authority in carrying out the measures; or
 - if the authority propose to merge the carrying out of the measures with the execution of other works, payments equal to any sums from time to time shown to have been expended by the authority in carrying out the merged operations up to the appropriate amount;

and in this subsection “the appropriate amount” means such aggregate amount as may be agreed or determined to be reasonable in all the circumstances, having regard to the expenditure which would have been incurred by the Corporation or by the authority in carrying out the measures.

- (3) The Corporation—
- in a case where the measures fall to be carried out in connection with property comprised in a main river, shall make the appropriate election under subsection (2) above; and
 - in any other case, shall not unreasonably refuse any request to make that election received from the appropriate drainage authority;

but the Corporation shall not be deemed to act unreasonably in refusing any such request received after the Corporation have begun to carry out the measures.

- (4) Notwithstanding anything in subsections (1) to (3) above, in any case where it is agreed or determined to be appropriate, the liability of the Corporation for the cost of any recurring measures may be discharged by a lump sum payment agreed or determined to represent the capital amount of that cost.

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- (5) Section 16 above (except subsections (6) to (8)) shall apply in any case where—
- (a) a damage notice has been given to the Corporation in respect of any property; and
 - (b) the Corporation are of the opinion with respect to all or any of the permanent works which would otherwise fall to be executed in connection with the property that—
 - (i) the necessity for those works; or
 - (ii) the nature or manner of their execution,
 is likely to be so affected by operations under this section, or under Part II of the ^{M2}Doncaster Area Drainage Act 1929, as to make it unreasonable that those works should be executed for the time being;
- and in its application to any stop notice given by virtue of this subsection, section 17(1) above shall have effect as if it referred to the Corporation no longer being of such opinion as is mentioned in paragraph (b) above.
- (6) The Corporation shall, for the purpose of carrying out any measures under this section, have the like powers—
- (a) of surveying and entering on any land; and
 - (b) of doing anything on land entered by them,
- as are conferred on the appropriate drainage authority by the enactments relating to land drainage; but nothing in this subsection shall apply in relation to any land occupied by or on behalf of the Crown.
- (7) Regulations made by the Secretary of State and the Minister of Agriculture, Fisheries and Food acting jointly may make provision—
- (a) with respect to the procedure to be followed by the Corporation and by the appropriate drainage authority in giving effect to the provisions of this section; and
 - (b) for the determination of questions arising under this section between the Corporation and the authority.
- (8) In this section—
- “agreed or determined” means agreed between the Corporation and the appropriate drainage authority or, in default of such agreement, determined in the manner provided by regulations under this section;
- “the appropriate drainage authority” means—
- (a) in a case where the measures would fall to be carried out either in connection with a main river, or outside any internal drainage district, the National Rivers Authority;
 - (b) in any other case, the internal drainage board in whose district the measures would fall to be carried out;
- “the Doncaster Drainage Area” has the same meaning as in the Doncaster Area Drainage Act 1929;
- “land drainage system” means a drainage system maintainable by a drainage authority;
- “main river” means a main river for the purposes of the ^{M3}Land Drainage Act 1976.

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Modifications etc. (not altering text)

- C3** S. 36 modified (31.10.1994) by 1994 c. 21, s. 43, **Sch. 6 para. 6** (with ss. 40(7), 66); S.I. 1994/2553, **art. 2**

Commencement Information

- I4** S. 36 wholly in force (S.) at 30. 11. 1991 see s. 54(2) and S.I. 1991/2508, **art.2**

Marginal Citations

- M2** 1929 c. xvii.
M3 1976 c. 70.

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