



Coal Industry Act 1994

1994 CHAPTER 21

PART III

RIGHTS AND OBLIGATIONS IN CONNECTION WITH COAL MINING

Subsidence

47 Disputes etc. as to subsidence matters.

- (1) The questions that may be referred to the [^{F1}appropriate tribunal] under section 40 of the 1991 Act (disputes generally) shall include—
- (a) any question as to who is the person with responsibility for subsidence affecting particular land;
 - (b) the question whether there has been a contravention of any subsidence requirement; and
 - (c) the question how any such contravention is to be remedied.
- (2) The Secretary of State may by regulations make such provision as he considers appropriate—
- (a) for establishing procedures that facilitate the making, by agreement or in accordance with regulations made by virtue of paragraph (b) below, of references to such arbitration as may be prescribed of questions arising under the 1991 Act or falling within subsection (1) above;
 - (b) for enabling any such question to be referred to and determined by arbitration in a case where (but for the regulations) it would fall to be referred to the [^{F2}appropriate tribunal] on account of a failure by the person whose interest in it derives from the fact or assertion that he is a person with responsibility for subsidence affecting land to agree to the arbitration or to any other method of determining the question; and
 - (c) for regulating the conduct of arbitrations to which questions are referred in accordance with regulations under this subsection.

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- (3) Subsections (2) and (3) of section 40 of the 1991 Act (burden of proof and incidental powers) shall apply for the determination of a question falling within subsection (1) above as they apply for the determination of questions arising under the 1991 Act.
- (4) Subject to subsection (5) below, where a question falling within subsection (1) above is referred to the [^{F3}appropriate tribunal] or in accordance with any regulations under subsection (2) above to arbitration, the powers of [^{F4}that tribunal] or of the arbitrator or arbiter shall include (in addition to any powers conferred by virtue of subsection (3) above)—
- (a) power to have such regard as may appear appropriate to any recommendations or report made by virtue of any regulations under section 46 above;
 - (b) power by order to require a person with responsibility for subsidence affecting land to take such steps for remedying any contravention of a subsidence requirement as that Tribunal, arbitrator or arbiter may direct; and
 - (c) power to award compensation of an amount not exceeding £5,000 in respect of any such inconvenience caused to a person by a contravention of a subsidence requirement as does not fall to be compensated for apart from this paragraph.
- (5) In the application of subsection (4)(b) above to an arbitration in so far as relating to subsidence affecting land in Scotland, the words “by order” shall be disregarded and the reference to requiring the person to take remedial steps shall not be construed as prejudicing any other provision of Scots law as respects enforcement of a decree arbitral.
- (6) The Secretary of State may by order substitute a higher amount for the amount for the time being specified in subsection (4)(c) above.
- (7) The Secretary of State may by regulations make provision—
- (a) for the expenses of maintaining procedures for the purposes of any regulations under subsection (2) above to be met, in whole or in part, by some or all of the persons with responsibility for subsidence affecting land or in such other manner as may be prescribed; and
 - (b) for one or more of the parties to a reference in accordance with any such regulations to be required to pay, or to make a contribution towards, the costs and other expenses incurred in relation to that reference by any person.
- (8) The provision that may be contained in regulations under this section shall include—
- (a) provision for any matter to which the regulations relate to be determined by the Authority in such manner, and by reference to such factors, as may be described in the regulations; and
 - (b) provision, where any expenses are to be met by the Authority in accordance with the regulations, for amounts in respect of those expenses to be recoverable by the Authority from other persons with responsibility for subsidence affecting land.
- (9) References in this section to a contravention of a subsidence requirement are references to any contravention by a person with responsibility for subsidence affecting any land of any of the following requirements, that is to say—
- (a) the requirements imposed on such a person by or under the 1991 Act or by any regulations under section 45 above;
 - (b) the requirement imposed by section 43(6) above;

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- (c) the requirement under paragraph 1 of Schedule 6 to this Act to forward a damage notice to the Authority as soon as reasonably practicable after receiving it; and
- (d) the requirement to comply with an order made by virtue of subsection (4)(b) above (or, as respects the application of that subsection mentioned in subsection (5) above, a decree granted by virtue of subsection (4)(b)) or section 40(3)(a) of the 1991 Act (orders of the ^{F5}appropriate tribunal).

(10) In this section—

^{F6}...

^{F7}“the appropriate tribunal” means—

- (a) in relation to England and Wales, the Upper Tribunal;
- (b) in relation to Scotland, the Lands Tribunal for Scotland; and]

“prescribed” means prescribed by regulations under this section;

and section 50 of the 1991 Act (regulations and orders) shall apply in relation to the powers to make regulations under this section, and the power to make orders under subsection (6) above, as it applies in relation to any power of the Secretary of State to make regulations or orders under that Act.

(11) The transitional provision that may be included, by virtue of subsection (10) above, in regulations under this section may include provision in relation to questions arising in relation to times before the restructuring date.

Textual Amendments

- F1** Words in s. 47(1) substituted (1.6.2009) by [The Transfer of Tribunal Functions \(Lands Tribunal and Miscellaneous Amendments\) Order 2009 \(S.I. 2009/1307\)](#), art. 1, **Sch. 1 para. 256(a)** (with Sch. 5)
- F2** Words in s. 47(2)(b) substituted (1.6.2009) by [The Transfer of Tribunal Functions \(Lands Tribunal and Miscellaneous Amendments\) Order 2009 \(S.I. 2009/1307\)](#), art. 1, **Sch. 1 para. 256(a)** (with Sch. 5)
- F3** Words in s. 47(4) substituted (1.6.2009) by [The Transfer of Tribunal Functions \(Lands Tribunal and Miscellaneous Amendments\) Order 2009 \(S.I. 2009/1307\)](#), art. 1, **Sch. 1 para. 256(a)** (with Sch. 5)
- F4** Words in s. 47(4) substituted (1.6.2009) by [The Transfer of Tribunal Functions \(Lands Tribunal and Miscellaneous Amendments\) Order 2009 \(S.I. 2009/1307\)](#), art. 1, **Sch. 1 para. 256(b)** (with Sch. 5)
- F5** Words in s. 47(9)(d) substituted (1.6.2009) by [The Transfer of Tribunal Functions \(Lands Tribunal and Miscellaneous Amendments\) Order 2009 \(S.I. 2009/1307\)](#), art. 1, **Sch. 1 para. 256(a)** (with Sch. 5)
- F6** Words in s. 47(10) inserted (1.6.2009) by [The Transfer of Tribunal Functions \(Lands Tribunal and Miscellaneous Amendments\) Order 2009 \(S.I. 2009/1307\)](#), art. 1, **Sch. 1 para. 256(c)** (with Sch. 5)
- F7** Words in s. 47(10) omitted (1.6.2009) by virtue of [The Transfer of Tribunal Functions \(Lands Tribunal and Miscellaneous Amendments\) Order 2009 \(S.I. 2009/1307\)](#), art. 1, **Sch. 1 para. 256(c)** (with Sch. 5)

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