

*Status: Point in time view as at 27/11/2003.*

*Changes to legislation: There are currently no known outstanding effects for the Opencast Coal Act 1958, FIFTH SCHEDULE. (See end of Document for details)*

## SCHEDULES

### FIFTH SCHEDULE

#### COMPENSATION IN RESPECT OF MINERALS

##### *General provisions*

- 1 (1) The provisions of this Schedule shall have effect in relation to land comprised in a compulsory rights order in the circumstances specified in subsection (1) of section thirty-three of this Act; and any reference in this Schedule to land to which this Schedule applies is a reference to land which, immediately before the operative date of such an order, falls within paragraph (a) or paragraph (b) of that subsection.
- (2) In this Schedule “the mineral operator”—
- (a) in relation to land which, immediately before the operative date of the order in question, is subject to a mining lease or order conferring working rights as mentioned in paragraph (a) of the said subsection (1), means the person for the time being entitled to the benefit of that mining lease or order, and
  - (b) in relation to land which, immediately before that date, is land falling within paragraph (b) of the said subsection (1), means the person for the time being entitled to the interest referred to in that paragraph;
- and, in relation to any land which this Schedule applies, “the relevant undertaking” means the mineral undertaking of the mineral operator.
- (3) In this Schedule “the relevant rights and facilities”, in relation to a mineral undertaking, means all rights and facilities for the time being available to the person carrying on that undertaking for the purposes of working, getting, carrying away, using, treating, converting and disposing of minerals, whether on land comprised in the compulsory rights order in question or elsewhere.
- (4) Any reference in any provision of this Schedule to the exercise of the relevant rights and facilities in the manner in which they might reasonably have been expected to be exercised in circumstances mentioned in that provision shall be construed as including a reference to the exercise of those rights and facilities to the extent to which they might reasonably have been expected to be exercised in those circumstances.
- [<sup>F1</sup>2 (1) Any entitlement to compensation under this Schedule shall be an entitlement to compensation from—
- (a) in the case of compensation under paragraph 4 or 12 of this Schedule, the persons who, for the whole or any part of the year in question, have been entitled to the rights conferred by the order;
  - (b) in the case of compensation under paragraph 5 of this Schedule, the person on whose application that order is made;
  - (c) in the case of compensation under paragraph 6 of this Schedule, the person by whom the compensation would be payable if it were compensation under section 27 of this Act;

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- (d) in the case of compensation under paragraph 7, 8, 9, 10 or 13 of this Schedule, the person who immediately before the end of the period of occupation is the person entitled to the rights conferred by the order.
- (2) Sub-paragraph (1)(a) of this paragraph shall have effect subject, where different persons have been entitled to the rights conferred by an order for different parts of the year, to any apportionment under section 35(3) of this Act.]

#### Textual Amendments

**F1** Sch. 5 para. 2 substituted (31.10.1994) by 1994 c. 21, s. 52, Sch. 8 para. 41 (with s. 40(7)); S.I. 1994/2553, art. 2

#### *Annual and initial compensation payable to mineral operator*

- 3 For the year beginning with the operative date of the compulsory rights order, and for each subsequent year which begins with an anniversary of that date and falls within the period of occupation, there shall be assessed—
- (a) the profit or loss which a person carrying on the relevant undertaking might reasonably have been expected to make for that year by the exercise of the relevant rights and facilities if the compulsory rights order had not been made, and
- (b) the profit or loss which such a person might reasonably have been expected to make for that year by the exercise of those rights and facilities in the circumstances existing in that year.
- 4 (1) Where the assessment for any year under sub-paragraph (a) of the last preceding paragraph shows a profit, and the assessment under sub-paragraph (b) of that paragraph also shows a profit, but a smaller profit than the assessment under sub-paragraph (a), the mineral operator shall be entitled to compensation for that year of an amount equal to the difference.
- (2) Where the assessment for any year under sub-paragraph (a) of the last preceding paragraph shows a profit, and the assessment under paragraph (b) of that paragraph shows a loss, the amount of that loss shall be added to the amount of that profit, and the mineral operator shall be entitled to compensation for that year of an amount equal to the sum of those amounts.
- (3) Where the assessment for any year under sub-paragraph (a) of the last preceding paragraph shows a loss, and the assessment under sub-paragraph (b) of that paragraph also shows a loss, but a greater loss than the assessment under sub-paragraph (a), the mineral operator shall be entitled to compensation for that year of an amount equal to the difference.
- 5 (1) For the year beginning with the operative date of the order, the mineral operator (in addition to any compensation payable by virtue of the last preceding paragraph) shall be entitled to compensation of an amount equal to the amount of any expenses reasonably incurred by him which are directly attributable to his being required to vacate land comprised in the order.
- (2) Without prejudice to the generality of the preceding sub-paragraph, the expenses referred to in that sub-paragraph shall be taken to include any expenses reasonably incurred by the mineral operator in procuring the cancellation or modification of a contract in force immediately before the operative date, in so far as it is—

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- (a) a contract for the supply of goods or the rendering of services which would have been required by him for the purposes of the relevant undertaking if the order had not been made, but in consequence of the order are not required for those purposes, or
  - (b) a contract for the supply by him of minerals or other goods which but for the order would have been supplied by him, directly or indirectly, by means of operations on land comprised in the order and, in consequence of the order, cannot be so supplied.
- 6 (1) If, in consequence of the confirmation of the compulsory rights order, the mineral operator incurs a loss in respect of a forced sale of any livestock, vehicles, plant, equipment or other chattels which are kept on land comprised in the order, or which are used on any such land for the purposes of the relevant undertaking, the mineral operator shall (subject to the next following sub-paragraph) be entitled to compensation of an amount equal to that loss.
- (2) Subsection (3) of section twenty-seven of this Act shall apply for the purposes of this paragraph.

*Terminal compensation payable to mineral operator*

- 7 (1) The provisions of this and the next following paragraph shall have effect in relation to land to which this Schedule applies where, after the end of the period of occupation, it continues to be land falling within paragraph (a) or paragraph (b) of subsection (1) of section thirty-three of this Act.
- (2) For the purposes of this paragraph there shall be assessed the profit which, for each year after the period of occupation, a person carrying on the relevant undertaking might reasonably have been expected to make by the exercise of the relevant rights and facilities, as those rights and facilities might reasonably have been expected to subsist at the end of the period of occupation, and in the circumstances which might reasonably have been expected to exist at the end of that period, if—
- (a) the compulsory rights order had not been made, and
  - (b) during the period of occupation, the person carrying on the relevant undertaking had exercised the relevant rights and facilities in the manner in which (had that order not been made) he might reasonably have been expected to exercise them.
- (3) There shall also be assessed the profit which, for each year after the period of occupation, a person carrying on the relevant undertaking might reasonably be expected to make by the exercise of the relevant rights and facilities, as those rights and facilities subsist at the end of the period of occupation, and in the circumstances existing at the end of that period, on the assumption that, during that period, he had exercised the relevant rights and facilities (so far as was reasonably practicable, having regard to the effect of the compulsory rights order) in such manner as in the circumstances he might reasonably have been expected to exercise them.
- (4) In this paragraph, and in paragraphs 8 to 10 of this Schedule, “year after the period of occupation” means a year which is either the year beginning with the end of the period of occupation or a year beginning with an anniversary of the end of that period.
- 8 (1) For each year after the period of occupation there shall be assessed the following values, that is to say,—

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- (a) the current value, as at the end of the period of occupation, of the expectation of making a profit for that year assessed in accordance with sub-paragraph (3) of the last preceding paragraph, and
  - (b) the current value, as at the end of the period of occupation, of the expectation of making a profit for that year assessed in accordance with sub-paragraph (2) of that paragraph.
- (2) If the aggregate of the values assessed in accordance with head (a) of the preceding sub-paragraph is less than the aggregate of the values assessed in accordance with head (b) thereof, the mineral operator shall be entitled to compensation of an amount equal to the difference.
- 9 (1) The provisions of this and the next following paragraph shall have effect in relation to land to which this Schedule applies where, after the end of the period of occupation, it continues to be subject to a mining lease the benefit of which is held for the purposes of a mineral undertaking, and that mining lease contains a provision as to minimum rent.
- (2) For each year after the period of occupation there shall be assessed the minimum rent liability (if any) which the mineral operator might reasonably have been expected to incur under that mining lease if—
- (a) the compulsory rights order had not been made, and
  - (b) during the period of occupation, he had exercised the relevant rights and facilities in the manner in which (had that order not been made) he might reasonably have been expected to exercise them.
- (3) For each such year there shall also be assessed, in the circumstances existing at the end of the period of occupation, the minimum rent liability (if any) which the mineral operator might reasonably be expected to incur under that mining lease, on the assumption that, during that period, he had exercised the relevant rights and facilities (so far as was reasonably practicable, having regard to the effect of the compulsory rights order) in such manner as in the circumstances he might have reasonably been expected to exercise them.
- (4) In this and the next following paragraph any reference to a minimum rent liability for any year, in relation to a mining lease, is a reference to the difference between—
- (a) the rent payable for that year under that mining lease, and
  - (b) the rent which would have been payable for that year under that mining lease if the lease had not contained any provision as to minimum rent.
- (5) The preceding provisions of this paragraph shall have effect in relation to an order conferring working rights as they have effect in relation to a mining lease.
- (6) In this paragraph “rent” includes yearly or other rent, and any toll, duty, royalty or other annual or periodical payment in the nature of rent, whether payable in money or in money’s worth or otherwise.
- 10 (1) The following capital equivalents shall be assessed, that is to say—
- (a) the capital equivalent, as at the end of the period of occupation, of the aggregate minimum rent liabilities assessed in accordance with sub-paragraph (3) of the last preceding paragraph, and
  - (b) the capital equivalent, as at the end of the period of occupation of the aggregate minimum rent liabilities assessed in accordance with sub-paragraph (2) of that paragraph.

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- (2) If the capital equivalent assessed in accordance with head (a) of the preceding sub-paragraph is greater than the capital equivalent assessed in accordance with head (b) thereof, the mineral operator shall be entitled to compensation of an amount equal to the difference.
- (3) For the purposes of this paragraph the capital equivalent of the aggregate minimum rent liabilities for any years (whether assessed in accordance with sub-paragraph (2) or sub-paragraph (3) of the last preceding paragraph) shall be taken to be the amount of a fund which, if set aside for the purpose at the end of the period of occupation, would afford a sufficient (but not more than sufficient) indemnity against those liabilities as so assessed.

*Compensation payable to owner other than mineral operator*

- 11 (1) The provisions of paragraphs 12 and 13 of this Schedule shall have effect in relation to land to which this Schedule applies where, immediately before the operative date of the order, the interest of the owner of the land, or a stratum thereof, is held by a person other than the mineral operator.
- (2) In those provisions “the separate interest” means the interest which is held as mentioned in the preceding sub-paragraph, and any reference to the owner of the separate interest is a reference to the person who is for the time being entitled to that interest.
- 12 (1) For the year beginning with the operative date of the order, and for each subsequent year which begins with an anniversary of that date and falls within the period of occupation, there shall be assessed the aggregate amount of the rent, royalties and other sums to which the owner of the separate interest might reasonably have been expected to be entitled for that year in respect of that interest, and in respect of any interest of his in any other relevant land, if—
  - (a) the compulsory rights order had not been made, and
  - (b) the person carrying on the relevant undertaking had exercised the relevant rights and facilities in the manner in which, in those circumstances, he might reasonably have been expected to exercise them.
- (2) For any such year there shall also be assessed the aggregate amount of the rent, royalties and other sums to which the owner of the separate interest might reasonably have been expected to be entitled for that year in respect of that interest, and in respect of any interest of his in any other relevant land, on the assumption that the person carrying on the relevant undertaking exercised the relevant rights and facilities during that year (so far as was reasonably practicable, having regard to the effect of the compulsory rights order) in such manner as in those circumstances he might reasonably have been expected to exercise them.
- (3) For any year for which the amount assessed under the last preceding sub-paragraph is less than the amount assessed under sub-paragraph (1) of this paragraph, the owner of the separate interest shall be entitled to compensation of an amount equal to the difference.
- (4) In this paragraph “other relevant land” means land, other than the land in which the separate interest subsists, being land in which the mineral operator has an interest held for the purposes of the relevant undertaking.

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- 13 (1) For the purposes of this paragraph there shall be assessed the market value which, at the end of the period of occupation, the separate interest might reasonably have been expected to have if—
- (a) the compulsory rights order had not been made, and
  - (b) the person carrying on the relevant undertaking had exercised the relevant rights and facilities in the manner in which in those circumstances he might reasonably have been expected to exercise them.
- (2) There shall also be assessed the market value which, in the circumstances existing at the end of the period of occupation, the separate interest might reasonably be expected to have, on the assumption that, during that period, the person carrying on the relevant undertaking exercised the relevant rights and facilities (so far as was reasonably practicable, having regard to the effect of the compulsory rights order) in the manner in which in those circumstances he might reasonably have been expected to exercise them.
- (3) If the value assessed under the last preceding sub-paragraph is less than the value assessed under sub-paragraph (1) of this paragraph, the owner of the separate interest shall be entitled to compensation of an amount equal to the difference.

*Provisions as to compensation under other provisions of Part II*

- 14 (1) Where any land to which this Schedule applies consists or forms part of land which constitutes a holding to which section seventeen, section twenty-one or section twenty-nine of this Act applies, the following provisions of this paragraph shall have effect.
- (2) Where for any year—
- (a) compensation would (apart from this sub-paragraph) be payable in respect of that holding by virtue of section seventeen of this Act, but
  - (b) it may reasonably be assumed that part of the holding would have been prevented from being used as mentioned in paragraph (c) of subsection (1) of section nineteen of this Act if the compulsory rights order had not been made, and the person carrying on the relevant undertaking had exercised the relevant rights and facilities in the manner in which, in those circumstances, he might reasonably have been expected to exercise them.
- the provisions of sections eighteen and nineteen of this Act shall apply in relation to that year as if that part of the holding were not comprised in the holding, and any reference in those sections to the entirety of the holding shall be construed accordingly.
- (3) Compensation under section twenty-two of this Act shall not be payable in respect of work carried out on land which forms part of the holding and is land to which this Schedule applies.
- (4) If the entirety of the holding consists of land to which this Schedule applies, no compensation under section twenty-three of this Act shall be payable in respect of the holding.
- (5) If only part of the holding consists of land to which this Schedule applies—
- (a) section twenty-three of this Act shall have effect in relation to the holding, but
  - (b) subsections (2) and (4) of that section shall apply as if that land did not form part of the holding, and any reference in that section to values computed in

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accordance with any of paragraphs (a), (b) and (c) of subsection (2) thereof shall be construed accordingly.

- (6) In this paragraph any reference to section seventeen, section eighteen, section nineteen, section twenty-two or section twenty-three of this Act includes a reference to the provisions of that section as applied by section twenty-nine of this Act.
- 15 (1) Where the land comprised in a compulsory rights order consists of or includes land of which, immediately before the operative date of the order, the surface is occupied by one person and any of the subjacent strata are occupied by another person, those subjacent strata shall not be treated as constituting a holding to which section seventeen, section twenty-one or section twenty-nine of this Act applies.
- (2) Where the land comprised in a compulsory rights order consists of or includes land of which, at the end of the period of occupation, the surface is owned by one person and any of the subjacent strata are owned by another person, the subjacent strata shall not be treated as constituting or forming part of a holding to which section twenty-one of this Act applies, or a holding in respect of which the provisions of that section have effect as applied by section twenty-nine of this Act.

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