

SCHEDULES

SCHEDULE 6

Regulation 13(8)

COMPENSATION IN RELATION TO OFF-SITE CONDITIONS

1.—(1) This Schedule applies in any case where—

- (a) an operator is required by an off-site condition in his permit to carry out works or do other things in relation to land not forming part of the site of the installation or mobile plant notwithstanding that he is not entitled to carry out the works or do the things;
- (b) a person whose consent is required has, pursuant to the requirements of regulation 13(7), granted, or joined in granting, to the operator any rights in relation to the land; and
- (c) those rights, or those rights together with other rights, are such as will enable the operator to comply with any requirements imposed on him by the off-site condition.

(2) In this Schedule—

“grantor” means a person mentioned in sub-paragraph (1)(b);

“relevant interest” means an interest in land out of which rights have been granted pursuant to the requirements of regulation 13(7).

2. In a case where this Schedule applies, any person who has granted, or joined in granting, the rights in question shall be entitled to be paid compensation under this Schedule by the operator.

3. Subject to paragraph 6(3) and (5)(b), compensation shall be payable under this Schedule for loss and damage of the following descriptions—

- (a) depreciation in the value of any relevant interest to which the grantor is entitled which results from the grant of the rights;
- (b) depreciation in the value of any other interest in land to which the grantor is entitled which results from the exercise of the rights;
- (c) loss or damage, in relation to any relevant interest to which the grantor is entitled, which—
 - (i) is attributable to the grant of the rights or the exercise of them;
 - (ii) does not consist of depreciation in the value of that interest; and
 - (iii) is loss or damage for which he would have been entitled to compensation by way of compensation for disturbance if that interest had been acquired compulsorily under the Local Government Act (Northern Ireland) 1972(1) in pursuance of a notice of intention to vest served on the date on which the rights were granted;
- (d) damage to, or injurious affection of, any interest in land to which the grantor is entitled which is not a relevant interest, and which results from the grant of the rights or the exercise of them; and
- (e) loss in respect of work carried out by or on behalf of the grantor which is rendered abortive by the grant of the rights or the exercise of them.

(1) 1972 c.9 (N.I.)

4.—(1) Subject to sub-paragraph (2), an entitlement to compensation under this Schedule arises on the date of the grant of the rights.

(2) Where, after a grant of rights pursuant to regulation 13(7), the conditions of the permit which rendered the grant of rights necessary are upheld on the final determination of an appeal against those conditions, the entitlement to compensation arises on the date of the final determination of the appeal.

5.—(1) An application for compensation under this Schedule shall be made by the grantor—

- (a) within 12 months from the date on which the entitlement to compensation arises in his case, or, as he may decide;
- (b) within six months from the date on which the rights are first exercised.

(2) An application shall be made in writing to the operator to whom the rights were granted and delivered at or sent by pre-paid post to the last known address for correspondence of that person.

(3) The application shall contain, or be accompanied by—

- (a) a copy of the grant of rights in respect of which the grantor's entitlement arises, and of any plans attached to that grant;
- (b) a description of the exact nature of any interest in land in respect of which compensation is applied for;
- (c) a statement of the amount of compensation applied for, distinguishing the amounts applied for under each of heads (a) to (e) of paragraph 3, and showing how the amount applied for under each head has been calculated; and
- (d) where the date on which the entitlement to compensation arises is ascertained in accordance with paragraph 4(2), a copy of the notice of the final determination of the appeal.

6.—(1) The amount to be paid by way of compensation under this Schedule shall be assessed in accordance with the following sub-paragraphs.

(2) The rules set out in Article 6 of the Land Compensation (Northern Ireland) Order 1982⁽²⁾ (rules for assessing compensation) shall, so far as applicable and subject to any necessary modifications, have effect for the purposes of this paragraph as they have effect for the purpose of assessing compensation for the compulsory acquisition of an interest in land.

(3) No account shall be taken of any enhancement of the value of any interest in land, by reason of any building erected, work done or improvement or alteration made on any land in which the grantor is, or was at the time of erection, doing or making, directly or indirectly concerned, if the Lands Tribunal is satisfied that the erection of the building, the doing of the work, the making of the improvement or the alteration was not reasonably necessary and was undertaken with a view to obtaining compensation or increased compensation.

(4) In calculating the amount of any loss under paragraph 3(e) expenditure incurred in the preparation of plans or on other similar preparatory matters, shall be taken into account.

(5) Where the interest in respect of which compensation is to be assessed is subject to a mortgage—

- (a) the compensation shall be assessed as if the interest were not subject to the mortgage; and
- (b) no compensation shall be payable in respect of the interest of the mortgagee (as distinct from the interest which is subject to the mortgage).

(6) Compensation under this Schedule shall include an amount equal to the grantor's reasonable valuation and legal expenses.

(2) [S.I. 1982/712 \(N.I. 9\)](#)

7.—(1) Compensation payable under this Schedule in respect of an interest which is subject to a mortgage shall be paid to the mortgagee or, if there is more than one mortgagee, to the first mortgagee and shall, in either case, be applied by him as if it were proceeds of sale.

(2) Amounts of compensation determined under this Schedule shall be payable—

- (a) where the operator and the grantor or mortgagee agree that a single payment is to be made on a specified date, on that date;
- (b) where the operator and the grantor or mortgagee agree that payment is to be made in instalments at different dates, on the date agreed as regards each instalment;
- (c) in any other case, subject to any direction of the Lands Tribunal or the court, as soon as reasonably practicable after the amount of the compensation has been finally determined.

(3) Any question of the application of paragraph 6(3) or of disputed compensation shall be referred to and determined by the Lands Tribunal.

(4) In relation to the determination of any such question, Articles 4 and 5 of the Land Compensation (Northern Ireland) Order 1982 (procedure on reference to the Lands Tribunal and costs) shall apply as if—

- (a) the reference in Article 4(1) of that Order to Article 3 of that Order were a reference to sub-paragraph (3) of this paragraph; and
- (b) references in Article 5 of that Order to the acquiring authority were references to the operator.

8.—(1) Compensation payable under this Schedule shall carry interest at the rate determined for the time being under paragraph 18 of Schedule 6 to the Local Government Act (Northern Ireland) 1972 from the date specified in sub-paragraph (2) until payment.

(2) The date specified in this sub-paragraph is—

- (a) in the case of compensation payable by virtue of paragraph 3(a) or (b), the date of depreciation;
- (b) in the case of compensation payable by virtue of paragraph 3(c), (d) or (e), the date on which the loss is sustained or the damage done or, where injurious affection is sustained, the date of the injurious affection; and
- (c) in the case of compensation payable by virtue of paragraph 6(6), the date on which the expenses become payable.

(3) If it appears to any person that he may become liable to pay to another compensation under this Schedule or interest under this paragraph he may, if the other person requests him in writing to do so, make one or more payments on account of such compensation or interest.

(4) If, after a payment has been made by any person under sub-paragraph (3)—

- (a) it is agreed or determined that he is not liable to pay compensation or interest; or
- (b) by reason of any agreement or determination, any payment under that sub-paragraph is shown to be excessive,

the payment or excess shall be recoverable by that person.