
Changes to legislation: There are currently no known outstanding effects for the Opencast Coal Act 1958,
Cross Heading: Terminal compensation payable to mineral operator. (See end of Document for details)

SCHEDULES

FIFTH SCHEDULE **E** **+W+S**

COMPENSATION IN RESPECT OF MINERALS

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,—
- (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 subparagraph (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 subparagraph (2) of that paragraph.

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- (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.
- (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.

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- (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.

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