

## Coal Industry Nationalisation Act 1946

#### **1946 CHAPTER 59**

Satisfaction and disposal of compensation.

## Date when compensation is to be due, and right to interim income to date of satisfaction.

- (1) Compensation in respect of a transfer of transferred interests or of an overhead expenses increase shall be due on the primary vesting date, subject to determination of the amount thereof.
- (2) For the period between the primary vesting date and the date on which any such compensation is fully satisfied, there shall be a right to interim income, to be satisfied in accordance with the provisions of section twenty-two of this Act.
- (3) Provision may be made by regulations for authorising the partial satisfaction of such compensation before the determination of the amount thereof has been completed.

#### 20 Recipients of compensation.

- (1) The person legally entitled to the compensation in respect of a transfer of transferred interests shall be—
  - (a) where the compensation unit includes only transferred interests of a company, and none of those interests was subject to any charge or lien for securing money or money's worth from which it is freed by or by virtue of section five or six of this Act or to any other restriction, right or liability from which it is freed by virtue of regulations made under or by virtue of either of those sections, that company;
  - (b) where the compensation unit includes only transferred interests of a person other than a company, and none of those interests was subject as aforesaid, that person;
  - (c) in other cases, such person as may be designated by regulations for the purpose of safeguarding the rights of persons entitled to beneficial rights in the compensation, and the regulations to be made for the purposes of this paragraph may, without prejudice to the generality thereof, designate, as the person to be legally entitled to the compensation in any such cases falling

within this paragraph as may be prescribed, the proper officer of the prescribed court or a trustee or trustees appointed by the Minister:

Provided that, where paragraph (a) of this subsection would apply but for a transferred interest's being subject to a floating charge and the charge will attach to the compensation, the said paragraph (a) shall apply as if the interest had not been subject to the charge.

- (2) Where a compensation unit comprises any transferred interest of a person other than a company or person legally entitled to the compensation under paragraph (a) or (b) of the preceding subsection, or comprises any transferred interest that was subject (otherwise than as mentioned in the proviso to the preceding subsection) to a charge or lien from which it is freed by or by virtue of section five or six of this Act or to any other restriction, right or liability from which it is freed by virtue of regulations made under or by virtue of either of those sections, the compensation shall be held and disposed of in accordance with regulations to be made for securing that the persons whose beneficial interests are affected by the transfer or freeing shall be entitled to such beneficial rights in the compensation as may be appropriate to their respective interests.
- (3) The regulations to be made under the last preceding subsection shall include provision authorising or requiring the Board to make to a person beneficially interested in respect of a restriction, right or liability from which a transferred interest is freed as mentioned in that subsection, and which was of a value to him exceeding the amount of any participation of his in the compensation, a payment in respect of the excess.
- (4) The regulations to be made under section nine of this Act for ascertaining, verifying and recording particulars relating to ownership of the transferred interests, or the regulations to be made under subsection (2) of this section, may render conditional on due and punctual compliance with provisions of those regulations any right to take legal proceedings on the ground of any dealing with compensation in respect of a transfer of transferred interests—
  - (a) as respects the legal title thereto, otherwise than in accordance with subsection (1) of this section or regulations made under that subsection; or
  - (b) as respects beneficial rights in any such compensation that falls to be dealt with under subsection (2) of this section, otherwise than in accordance with regulations made under that subsection.
- (5) The person entitled to compensation in respect of an overhead expenses increase shall be the company or other person whose assets are severed.

### 21 Mode of satisfaction of compensation.

- (1) Compensation in respect of a transfer of transferred interests shall be satisfied by the issue of government stock (that is to say, stock the principal whereof and the interest whereon shall be charged on the Consolidated Fund), except that—
  - (a) the compensation in respect of a compensation unit which comprises interests arising under a former freeholder's lease shall be satisfied by a money payment;
  - (b) so much of the compensation in respect of any compensation unit as is equal to the value of the unit so far as attributable to stocks of products of colliery production activities, or to consumable or spare stores within the meaning of the First Schedule to this Act, shall be satisfied by a money payment;

- (c) provision may be made by regulations for the satisfaction of any such compensation in whole or in part by a money payment in other cases, being cases of a kind for which it appears to the Minister to be expedient to make special provision.
- (2) Compensation in respect of an overhead expenses increase shall be satisfied by the issue of government stock, subject to the power conferred by paragraph (c) of the preceding subsection in relation to compensation in respect of a transfer of transferred interests.
- (3) The amount of the government stock to be issued in satisfaction of any amount which is under this Act to be satisfied by the issue of such stock shall be such as, in the opinion of the Treasury, is of a value equal on the date of the issue to the amount to be satisfied, having due regard to market values of other government securities existing at such date.
- (4) The Treasury may by regulations make provision as to the procedure for the issuing of government stock in satisfaction as aforesaid, including provision as to evidence of the amount of stock to be issued in any case, and the person to whom it is to be issued, on which the Banks of England and Ireland respectively are to be authorised or required to act.
- (5) In this Act the expression " stock issued for compensation " means an amount of government stock issued in or towards satisfaction of any amount which is under this Act to be satisfied by the issue of such stock.

### 22 Interim income pending satisfaction of compensation.

- (1) The right conferred by subsection (2) of section nineteen of this Act to interim income for the period between the primary vesting date and the date of the satisfaction in full of compensation in respect of a transfer of transferred interests, or of an overhead expenses increase, shall be satisfied in accordance with the provisions of this section.
- (2) Subject to the provisions of subsections (3) and (4) of this section as to the revenue payments therein mentioned,—
  - (a) the said right conferred by subsection (2) of section nineteen of this Act shall be satisfied, so far as regards interim income for the period between the primary vesting date and the time when any amount of compensation in respect of a transfer of transferred interests or of an overhead expenses increase is satisfied, by making, in addition to the issue of the stock then issued in satisfaction of that amount of compensation or to the making of the money payment then made in satisfaction of that amount of compensation, as the case may be, a money payment of an amount equal to interest for that period on that amount of compensation at such rate or rates as may be prescribed as respects that period or different parts thereof by order of the Treasury; and
  - (b) the provisions of section twenty of this Act as to the legal and beneficial title to compensation shall have effect in relation to additions to compensation under this subsection, with the substitution for references therein to the compensation of references to the additions thereto.
- (3) The following provisions of this subsection shall have effect as to the making to colliery concerns, and to subsidiaries within the meaning of the First Schedule to this Act of such concerns, of payments in respect of each of the two years beginning with the primary vesting date and the first anniversary thereof respectively, that is to say,—

- (a) a colliery concern or such a subsidiary shall be entitled in respect of each of the said two years to a payment of an amount equal to one half of the comparable ascertained revenue of the concern, or of the subsidiary, as the case may be, attributable to activities thereof for which the transferred interests thereof were used or owned:
- (b) the payments to be made under the last preceding paragraph are in this section referred to as "revenue payments", and shall be money payments;
- (c) for the purposes of paragraph (a) of this subsection a concern's or subsidiary's comparable ascertained revenue attributable to activities mentioned in that paragraph shall be taken to be either (as the concern or subsidiary may elect in accordance with regulations) the amount of its profits and gains so attributable, computed on income tax principles subject to such adaptations as may be prescribed, for its last complete accounting period before the first day of July in the year nineteen hundred and forty-six, or the average of the amounts of its profits and gains so attributable and computed for its two complete accounting periods last before the first day of July in the years nineteen hundred and forty-four and nineteen hundred and forty-five respectively (any such amount for any accounting period of more or less than twelve months being adjusted to a twelve months' equivalent thereof):

Provided that, if the amount of the profits and gains of a colliery concern attributable and computed as aforesaid for any such accounting period as aforesaid, so far as attributable to such of the activities mentioned in paragraph (a) of this subsection as were activities relevant to district wages ascertainments, is less than an amount equal to four pence per ton on the concern's output of coal disposable commercially for that period, those profits and gains shall be reckoned for the purposes of this subsection as if they had been of the latter amount;

- (d) any question arising under the last preceding paragraph as to what were the profits or gains of a concern or subsidiary, attributable and computed as therein mentioned, for any accounting period, shall be determined in such manner as may be prescribed; and any question arising thereunder as to what was a colliery concern's output of coal disposable commercially for any period shall be determined by reference to the quantities of coal shown by returns for that period certified and furnished to the Minister to have been gotten by the concern and to have been available for sale commercially.
- (4) The provision made by the last preceding subsection shall be deemed, in the case of any colliery concern or of any such subsidiary, to be in substitution for the provisions of subsection (2) of this section, so far as regards additions thereunder for the said two years or any part thereof to compensation for a transfer of transferred interests being compensation attributable to transferred interests of that concern or subsidiary, except as to any excess of the aggregate amount of such additions over the aggregate amount of the revenue payments of that concern or subsidiary.
- (5) The Minister may by regulations make such provision supplementary to or consequential on the provisions of this section as appears to him to be necessary or expedient, and in particular, but without prejudice to the generality of this subsection, provision may be made by regulations made thereunder for making adjustments requisite for giving effect to the last preceding subsection and for making good any underpayment or overpayment to a colliery concern or such a subsidiary which may occur in consequence of the making of additions or revenue payments under this

section before all the facts relevant for giving effect to the last preceding subsection have become ascertainable.

### 23 Restrictions on disposal of stock issued for compensation of companies.

- (1) Stock issued for compensation to a company legally entitled to the compensation by virtue of paragraph (a) of subsection (1) of section twenty of this Act, and any stock issued to the company in exchange therefor under subsection (4) of this section, shall be subject to restrictions as to the disposal thereof to the extent specified in this section.
- (2) Such stock may be disposed of—
  - (a) at any time, by way of transfer to holders of debentures issued by the company in satisfaction of rights of theirs as such holders, or to members of the company in satisfaction of rights of theirs to a return of capital or to participation in surplus assets;
  - (b) when the company is being wound up, by way of sale, or in any other manner, for any purpose other than satisfying rights of holders of debentures issued by the company, or of members of the company, as such holders or members;
  - (c) when the company is not being wound up, by way of sale of so much of such stock as it may be requisite to sell for the purpose of satisfying rights of, or obligations of the company to, persons other than holders of debentures issued by the company as such or members of the company as such;
  - (d) when the company is not being wound up, by way of sale of so much of such stock as it may be shown to the satisfaction of the Treasury to be requisite to sell for the purpose of raising an amount of liquid capital which in the opinion of the company is needed for business of the company or of a subsidiary within the meaning of the First Schedule to this Act of the company, or in order to facilitate a development or extension of business to be carried on by the company or such a subsidiary thereof, and which apart from this section the company would be entitled to raise;

and, when any such stock has been so disposed of, it shall be free from any restriction under this section.

(3) Except as provided by the last preceding subsection, such stock shall not be sold or otherwise disposed of:

Provided that any illegality by virtue of this subsection of a disposal of stock shall not in anyway affect the title to that stock.

- (4) The Treasury may by regulations make provision—
  - (a) for the issue of stock which on the issue thereof will be subject to restrictions under this section in the form of stock that is by the terms of issue thereof inalienable, so however that the regulations shall also provide for rendering any stock issued for compensation which is for the time being held in that form, and which is to be disposed of in accordance with subsection (2) of this section, exchangeable for a like amount of government stock having in all other respects the like incidents as the inalienable stock, but transferable in the ordinary manner appropriate to government stock of the class in question, and the regulations shall also provide for rendering all such stock so exchangeable at a date to be fixed by the Treasury as being the date when the purposes of this section have been substantially satisfied;
  - (b) for arranging, where it is proposed to satisfy rights of holders of debentures issued by a company, or of members of a company, and to use for that purpose

- stock to be issued for compensation or stock to be issued in exchange under the preceding paragraph, for the issue thereof direct to them;
- (c) for rendering it obligatory on such holders or members to accept stock issued for compensation or stock issued in exchange under paragraph (a) of this subsection in satisfaction of rights which they would otherwise have as such holders or members to payments in cash, on the basis of the market value of the stock at the date of transfer or issue to them, subject to any provision for proceeding on the basis of its market value at an earlier date which may be requisite in connection with the making of arrangements for distribution amongst a number of persons or classes of persons.
- (5) The Treasury may by regulations make provision for the application of this section, subject to such adaptations as may be prescribed, to stock issued for compensation to which a company is not legally entitled as mentioned in subsection (1) of this section, but in which the company is entitled to beneficial rights.

## Interim protection of persons having assets transferred against enforcement of liabilities.

- (1) If, on application made to it by any company or other person, the tribunal to be established for the purposes of this section is satisfied—
  - (a) that the applicant is an owner of transferred interests and that those transferred interests formed a substantial part of the applicant's resources;
  - (b) that steps have been taken for the enforcement of a liability of the applicant to make a payment, or for the enforcement of a security upon property of the applicant, and that the taking of those steps is attributable to the passing of this Act or to matters arising in consequence thereof;
  - (c) that the applicant will be in a position, so far as can reasonably be foreseen, to meet his liabilities as they fall due, or in the case of liabilities arising in connection with transferred interests, on satisfaction of a right of his to compensation attributable to those interests or to interim income; and
  - (d) that it will be for the benefit of the applicant and of the persons entitled to enforce liabilities of his, or to enforce securities upon his property, as a whole, that the enforcement thereof should be controlled;

the tribunal may direct that the applicant shall be entitled to protection under this section.

- (2) Whilst a direction under this section is in force none of the rights or remedies for the exercise of which leave is required under section one of the Courts (Emergency Powers) Act, 1943, shall be exercised against the applicant or his property (whether or not that Act remains in force for the time being), except with the leave of the appropriate court within the meaning of that Act.
- (3) The tribunal may, at the time of giving a direction under this section or thereafter at any time whilst the direction remains in force, specify, and from time to time vary or revoke, conditions subject to which the direction is to operate for the time being (including, without prejudice to the generality of this provision, conditions requiring, or prohibiting, or limiting the amount of, payments to any particular creditors or class of creditors, or, where the applicant is a company, prohibiting, or limiting the amount of, dividends to be paid by the company), and on breach of any such condition the direction shall cease to be in force.

- (4) The tribunal may at any time revoke a direction under this section, and any such direction not previously revoked shall cease to be in force at the expiration of six months from the date when the compensation for the transferred interests of the applicant is fully satisfied.
- (5) The tribunal may, and shall if so required by the appropriate court, furnish for the assistance of that court on any application made to it for leave to exercise any of the rights or remedies mentioned in subsection (2) of this section a report of the tribunal's reasons for giving a direction under this section or for the imposition of conditions under subsection (3) of this section and generally as to the circumstances relevant to the direction.
- (6) Provision shall be made by regulations for the establishment of a tribunal for the purposes of this section, having as its chairman a barrister or solicitor of not less than seven years' standing, and having included amongst the members thereof an accountant having the prescribed qualifications and a person having wide experience in commercial or financial matters, and the regulations may, without prejudice to the generality of this subsection, include provision—
  - (a) for the charging of fees for meeting the cost of remuneration or allowances to members of the tribunal and its expenses;
  - (b) for regulating any matters relating to the practice and procedure of the tribunal, including provision as to parties and their representation;
  - (c) for awarding costs of proceedings before the tribunal, determining the amount thereof and the enforcement of awards thereof;

and, subject to the provisions of any such regulations, the tribunal shall have power to regulate its own procedure.

# Adjustments as between classes of debenture and shareholders of companies having assets transferred.

- (1) Provision shall be made by regulations for due regard being had, as between classes of debenture holders, or of members, or of both, of a company being an owner of transferred interests, to what their relative expectations of income yield from their respective interests in the company would have been if this Act had not been passed, and for that purpose the regulations shall provide facilities for adjusting the respective interests of such classes in the company's assets as affected by the substitution of the compensation under this Act for the transferred interests of the company so as to give effect, so far as may be, on the one hand to the said expectations and on the other hand to the rights of priority conferred on such classes respectively by the debentures and the memorandum and articles of association of the company.
- (2) The said provision shall include facilities for the taking effect of schemes for such adjustment if assented to within a prescribed period by such majorities as may be prescribed, on the basis of subsection (2) of section one hundred and fifty-three of the Companies Act, 1929, of the members of each of the classes concerned and either not objected to by any member of a class concerned or, if so objected to, approved by a tribunal to be established under the regulations, and in default of schemes so taking effect, for the giving of directions for such adjustment by the tribunal to be so established on application as may be prescribed of the company or of members of a class concerned.
- (3) Subsection (6) of the last preceding section shall have effect in relation to the tribunal to be established for the purposes of this section.